LIBRARY
SUPREME COURT, U. S.

APPENDIX

FILED
FEB 12 1968
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1016

WAYNE DARNELL BUMPER, PETITIONER

vs.

NORTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR CERTIORARI FILED SEPTEMBER 18, 1967
CERTIORARI GRANTED JANUARY 15, 1968

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1016

WAYNE DARNELL BUMPER, PETITIONER

vs.

NORTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

INDEX

[fol. 1]

IN THE SUPREME COURT OF NORTH CAROLINA,
FIFTEENTH DISTRICT

Spring Term, 1967

No. 826

From Alamance

STATE OF NORTH CAROLINA

v.

WAYNE DARNELL BUMPER

Dockets Nos. 109, 110, 111

Before HOBGOOD, J., October 24, 1966, Criminal Session, Alamance Superior Court. DEFENDANT APPEALED.

* * * *

[fol. 2]

IN THE SUPERIOR COURT, ALAMANCE COUNTY

CRIMINAL SESSION

ORGANIZATION OF COURT—August 15, 1966.

Be it known that the Superior Court was begun and held on the 15th day of August, 1966, for the trial of Criminal cases only, with the Honorable Hamilton H. Hobgood, Judge Presiding, and the Honorable Thomas D. Cooper, Jr., Solicitor, and the Honorable Spencer B. Ennis, Assistant Solicitor for the State of North Carolina, where the following proceedings were had, to wit:

The following are Grand Jurors serving term ending January, 1967: H. G. Alexander and eight others (naming them). The following are Grand Jurors serving term ending August, 1967: Ernest S. Sutton and eight others (naming them).

NORTH CAROLINA—ALAMANCE COUNTY

This is to certify that the foregoing is a true copy of the original on file in this office.

(SEAL)

This 28th March, 1967.
LOLA RAY MITCHELL, Deputy C.S.C.
M.D. 34—243.

[fol. 3] INDICTMENT FOR RAPE

The Jurors for the State upon their oath present, That Wayne Darnell Bumpers, late of the County of Alamance, on the 31st day of July in the year of our Lord one thousand nine hundred and sixty-six, with force and arms, at and in the County aforesaid, did unlawfully, willfully and feloniously ravish and carnally know Loretta Nelson, a female, by force and against her will, against the form of the statute in such case made and provided and against the peace and dignity of the State.

/s/ ENNIS, Assistant Solicitor.

No. 142

STATE v. WAYNE DARNELL BUMPERS

INDICTMENT—RAPE

----------,Pros.

WITNESSES:

S. D. George
X Loretta Nelson
X Monty Jones
X John Stockard

Those marked X sworn by the undersigned Foreman, and examined before the Grand Jury, and this bill found:

X A True Bill.

CAROLYN L. CORRELL
Foreman Grand Jury

NORTH CAROLINA—ALAMANCE COUNTY

This is to certify that the foregoing is a true copy of the original on file in this office.
This 28th March, 1967.
LOLA RAY MITCHELL, Deputy C.S.C. (SEAL)

INDICTMENT—ASSAULT WITH INTENT TO KILL

The Jurors for the State, upon their oath, present, that Wayne Darnell Bumpers late of the County of Alamance on the 31st day of July, 1966, at and in the County aforesaid, did, unlawfully, willfully and feloniously assault Monty Jones with a certain deadly weapon, to wit: a .22 [fol. 4] caliber rifle with the felonious intent to kill and murder the said Monty Jones inflicting serious injuries, not resulting in death, upon the said Monty Jones, to wit: serious injuries from shot wound in the chest, against the form of the Statute in such case made and provided, and against the peace and dignity of the State.

/s/ ENNIS
Asst. Solicitor.

No. 144

STATE v. WAYNE DARNELL BUMPERS

INDICTMENT—ASSAULT WITH INTENT TO KILL

WITNESSES:

X Loretta Nelson
S. D. George
X John Stockard

Those marked thus X and sworn by the undersigned foreman and examined before the Grand Jury and this Bill found: X a True Bill.

CAROLYN L. CORRELL
Foreman of the Grand Jury.

NORTH CAROLINA—ALAMANCE COUNTY

This is to certify that the foregoing is a true copy of the original on file in this office.
This 28th March, 1967.
LOLA RAY MITCHELL, Deputy C.S.C. (SEAL)

INDICTMENT—ASSAULT WITH INTENT TO KILL

The Jurors for the State, upon their oath, present, That Wayne Darnell Bumpers late of the County of Alamance on the 31st day of July, 1966, at and in the County aforesaid, did unlawfully, willfully and feloniously assault Loretta Nelson with a certain deadly weapon, to wit: a .22 caliber rifle with the felonious intent to kill and murder the said Loretta Nelson inflicting serious injuries, not resulting in death, upon the said Loretta Nelson, to wit: serious injuries from gun shot wound in chest, body [fol. 5] and back against the form of the statute in such case made and provided, and against the peace and dignity of the State.

/s/ ENNIS
Asst. Solicitor.

No. 143

STATE v. WAYNE DARNELL BUMPERS

INDICTMENT—ASSAULT WITH INTENT TO KILL

WITNESSES:

X Monty Jones
S. D. George
X John Stockard

Those marked thus X and sworn by the undersigned foreman and examined before the Grand Jury and this Bill found X a True Bill.

CAROLYN L. CORRELL
Foreman of the Grand Jury.

NORTH CAROLINA—ALAMANCE COUNTY

This is to certify that the foregoing is a true copy of the original on file in this office.
This 28th March, 1967.
LOLA RAY MITCHELL, Deputy C.S.C. (SEAL)

ORGANIZATION OF COURT—October 24, 1966

CRIMINAL TERM

MONDAY, OCTOBER 24, 1966:

Pursuant to an order of recess, court reconvened at 10:00 A.M., with the Honorable Hamilton H. Hobgood, Judge Presiding, and the Honorable Thomas D. Cooper, Jr., Solicitor, and the Honorable Spencer B. Ennis, Assistant Solicitor for the State, where the following proceedings were had, to wit:

All 30 of the regular jurors drawn for this session of court were examined; five were accepted and 25 were rejected. The five accepted are as follows: William G. Jones, Ken R. Marley, Hubert L. Halford, Howard McClain, and [fol. 6] Paul K. Curtis.

The Court ordered all names of special venire be placed in a box and selection of the jury from the special venire was resumed in the same manner as shown in the minutes above, and Jeffreys Bryan Allen, 5 years old, resumed the drawing of the names from the special venire. Ten were rejected and seven were accepted.

JURY: The following twelve (12) jurors were accepted: William G. Jones and eleven (11) others (naming them).

The Court finds that the defendant used 13 peremptory challenges and the State used two. Due to the length of the trial of this case, the Court in its discretion ordered two alternate jurors to be selected, sworn and impaneled. Six jurors were drawn from the box, four were rejected and two were accepted. Linberg Jacobs was accepted for the first alternate, and William E. Overman, Jr. was accepted as the second alternate.

The jury, having been sworn, were impaneled in cases # 109, Rape; #110, Assault with deadly weapon with intent to kill inflicting serious bodily injury not resulting in death; and # 111, assault with deadly weapon with intent to kill inflicting serious bodily injury not resulting in death.

NORTH CAROLINA—ALAMANCE COUNTY

This is to certify that the foregoing is a true copy of the original on file in this office.
This 28th March, 1967.
LOLA RAY MITCHELL, Deputy C.S.C. (SEAL)

MD. 34—338.

* * * *

[fol. 15]

Motion for Return of Seized Property and Suppression of Evidence

Wayne Darnell Bumper, the defendant in the above-entitled action, hereby moves this Court to direct that certain property of which he is the owner, namely, one pair of overall pants, one shirt, and one pair of tennis shoes, certain property of which his grandmother, Mrs. Heddy Leath, is the owner, namely, one .22-caliber Remington rifle, and which on the afternoon of August 2, 1966, at his grandmother's house in Faucette Township, Alamance County, North Carolina, was unlawfully seized and taken from his grandmother, Mrs. Heddy Leath, and from her premises by four deputies of the Sheriff of Alamance County, whose true names are unknown to the petitioner, be returned to him and to Mrs. Heddy Leath, respectively, and that it be suppressed as evidence against him in any criminal proceeding.

The petitioner further states that the property was seized against his will and the will of Mrs. Heddy Leath, and without a search warrant, as more fully shown by the affidavits of Mrs. Heddy Leath and Ronald Vaughn attached hereto as enclosures 1 and 2.

Smith, Moore, Smith, Schell & Hunter
By: /s/ Norman B. Smith
Attorneys for Defendant
Petitioner.

Affidavit of Mrs. Hattie Leath to Motion

MRS. HATTIE LEATH, being first duly sworn, deposes and says:

[fol. 16] 1. Her name is Hattie Leath. She is a Negro, a widow, and is 66 years old.

2. She lives in Faucette Township of rural Alamance County, at the end of a dirt road, approximately one mile in length, which turns off the Mount Vernon Church Road.

3. The defendant in the above-entitled action is her grandson. Before taken into custody, he lived with her. Other members of her household are her son Junius Leath and several grandchildren, the oldest of whom are of high school age and the youngest of whom are of pre-school age.

4. On Tuesday, August 2, 1966, at about 2:00 P.M., four white men drove up to her house in two cars. She knew these men to be officers of the Alamance County Sheriff's Department, although they were not in uniform. Her son Junius was not in or near the house at the time the deputies arrived, although several of her grandchildren were there.

5. One of the deputies came up on the porch of her house and walked up to the front screened door. She was standing immediately inside the door. The deputy said he had a notice or a warrant or something like that, for searching her house. He did not appear to have any paper in his hand, and he did not read anything to her. After hearing this, she did not stop to think about whether the officers had a right to search her house. She simply answered the officer right away by saying, "Go ahead," as she opened the door and stepped out onto the porch. The officers began at once to search the house.

/s/ MRS. HATTIE LEATH Affiant.

(Sworn to September 28, 1966)

[fol. 17]

AFFIDAVIT OF RONALD VAUGHN TO MOTION

RONALD VAUGHN, being first duly sworn, deposes and says:

1. His name is Ronald Vaughn. He is 14 years old.

2. He lives with his grandmother, Mrs. Heddy Leath, at the end of a dirt road which turns off the Mount Vernon Church Road in Alamance County.

3. On Tuesday, August 2, 1966, about 2 P.M., four white officers from the Sheriff's Department of Alamance County came to search Mrs. Leath's house.

4. Some time after they came inside the house and commenced their search, one of the deputies approached him and asked if they could have the overalls and tennis shoes which he was wearing. He said, "All right. Take them." He then took off the overalls and tennis shoes and gave them to the officer.

/s/ RONNIE VAUGHN Affiant.

(Sworn to September 28, 1966)

ORDER COMMITTING DEFENDANT TO CENTRAL PRISON—
October 26, 1966

It appearing to the Court that the defendant Wayne Darnell Bumpers has been convicted of the capital crime of Rape and two charges of felonious assault and has this day been sentenced to ten years in State Prison to begin at the expiration of the sentence this day imposed in Case 110, and in Case 109 to imprisonment for and during the term of his natural life in State's Prison to begin at the expiration of the sentence this day imposed in 111;

And it further appearing to the Court that the defendant has given notice of appeal to the Supreme Court of North Carolina from the sentences hereinabove imposed; [fol. 18] and it further appearing to the Court that the defendant should be transferred to State's Prison, Raleigh, North Carolina, for his own safekeeping, in that threats have been made against his life;

IT IS NOW, THEREFORE, ORDERED that the defendant Wayne Darnell Bumpers be transferred by the Sheriff of Alamance County to the Warden, Central Prison, Raleigh, North Carolina, and that the defendant be

confined to said Central Prison, without bond, until a disposition is made of his appeal by the North Carolina Supreme Court or until said appeal be withdrawn.

This the 26th day of October, 1966.

/s/ HAMILTON H. HOBGOOD
Judge Presiding.

IN THE SUPERIOR COURT, ALAMANCE COUNTY
CRIMINAL SESSION

MINUTE ENTRIES RELATING TO VERDICT, JUDGMENT AND APPEAL—October 26, 1966.

Pursuant to an order of recess, Court reconvened at 9:30 A.M. Wednesday, October 26, 1966, where the following proceedings were had, to wit:

No. 110. STATE v. WAYNE DARNELL BUMPERS.

Assault with deadly (weapon) with intent to kill inflicting serious bodily injury not resulting in death. After hearing all of the evidence and argument of counsel and the charge of the Court, the jurors say for their VERDICT: Guilty as charged in the Bill of Indictment. JUDGMENT OF THE COURT is that the defendant be imprisoned in State Prison for a term of 10 years to be assigned to do labor as provided by law.

No. 111. STATE v. WAYNE DARNELL BUMPERS

Assault with deadly weapon with intent to kill inflicting [fol. 19] serious bodily injury not resulting in death. After hearing all of the evidence, the argument of the counsel and the charge of the Court, the jury say for their VERDICT: Guilty as charged in the Bill of Indictment. JUDGMENT OF THE COURT is that he be imprisoned in State Prison for a term of 10 years to be assigned to do labor as provided by law. This sentence is to begin at the expiration of sentence imposed in No. 110.

Rape. The defendant has heretofore been arraigned and his privately employed counsel, Norman B. Smith, enters a plea of not guilty. After the defendant's attorney and the Solicitor and Assistant Solicitor made arguments to the jury, the Court then charged the jury and finished the charge at 1:10 P.M. The twelve members of the jury who were selected to try the case retired to the jury room to deliberate upon a verdict after the two members of the jury who were selected as alternates were excused at 2:30 P.M. The jury filed into the courtroom at 4:30 P.M. and announced that they had reached a verdict. Whereupon the following proceedings were had, to wit: THE COURT SAID TO THE JURY: "Gentlemen of the jury, answer to your name as they are called." The Court called the roll of the jury and all 12 members of the jury answered and the Court made the following inquiry with answer shown below:

COURT: Have you all agreed on a verdict?

THE JURY says: We have.

COURT: Who shall speak for you?

THE JURY says: Wallace P. May, Jr., our Foreman.

COURT: Wayne Darnell Bumpers, stand up, hold up your right hand. Same being done. Gentlemen of the jury, look upon the prisoner. What say you? Is he guilty of the felony of Rape whereof he stands indicted, or not guilty?

WALLACE P. MAY, JR., Foreman of the Jury (speaking for the Jury): Guilty of rape as charged in the Bill [fol. 20] of Indictment and recommend that he be punished by imprisonment for life in State Prison.

COURT: Gentlemen of the jury, if this is your verdict all twelve members hold up your right hand.

COURT: Hearken to your verdict as the Court records it you say that Wayne Darnell Bumpers is guilty of rape whereof he stands charged with the recommendation for mercy so say you all. Judgment of the Court is that the defendant Wayne Darnell Bumpers be imprisoned in State Prison for the remainder of his natural life to be assigned to work as by law provided. This sentence to

begin at the expiration of the sentence in No. 111 this day imposed. The defendant through his privately employed counsel, Norman B. Smith, gives notice of appeal to the State Supreme Court in cases Nos. 109, 110, and 111. Further notice waived. The defendant is given 90 days to serve case on appeal and the State is allowed 30 days to file exceptions or counter-case on appeal.

---

* * * *

[fol. 25]

STATEMENT OF CASE ON APPEAL

This was a matter that came on for trial and was tried at the October 1966 Criminal Session of Alamance County Superior Court, before His Honor Hamilton H. Hobgood, Judge Presiding, and a jury. The State was represented by Honorable Thomas D. Cooper, Jr., Solictor, and Honorable ———— Ennis, Assistant Solicitor; the defendant by Norman B. Smith, Esq., of the firm of Smith, Moore, Smith, Schell & Hunter. The defendant was tried upon three bills of indictment, consolidated for trial, upon motion of the Solicitor, to wit, Bill of Indictment in Case Number 109, "Rape"; Bill of Indictment in Case Number 110, "Assault with a deadly weapon upon one Monty Jones, with intent to kill, inflicting serious injury, not resulting in death"; and Bill of Indictment in Case Number 111, "Assault with a deadly weapon upon one Loretta Nelson, with intent to kill inflicting serious injury not resulting in death."

The defendant entered a plea of "Not Guilty" to each of the charges.

The jury found the defendant guilty as charged in Cases 110 and 111, and guilty as charged in Case 109, with a recommendation of life imprisonment. Thereupon the defendant gave notice of appeal to the State Supreme Court in each case.

THE COURT: Let the record show the Clerk places at this time the names of the Jurors upon scrolls of paper and puts them in a box to be drawn as provided by law [fol. 26] by a child under ten years of age.

THE COURT: What is the name of the child?
THE CLERK: Jeffery Bryan Allen.
THE COURT: What is the age of the child?
THE CLERK: Five years of age.

Thereupon the following took place upon the *VOIRE DIRE* directed to each prospective juror by name, as indicated, to select a jury of twelve and two alternate jurors, to wit:

MRS. ELBERT H. ANDERMAN:
Passed by the State
Excused by the defendant

JIMMY ROBERTSON
Passed by State
Excused by defendant

WILLIAM G. JONES
Accepted by the State and Defendant

SARA ISABEL ANDERSON—EXAMINED BY THE STATE:

I don't believe in capital. In the event the Court instructed me that the verdict of guilty would require the Court to sentence this man to die in the gas chamber, I would not even consider that.

MR. COOPER: Challenge for cause.
THE COURT: You may be excused.
Exception by Defendant. EXCEPTION # 1.

KEN R. MARLEY
Accepted by the State and the Defendant.

J. WESLEY ALEXANDER—Examined by the State:

I wouldn't say I have any religious scruples against the imposition of capital punishment. I don't think that I

could vote for the death penalty. If the Court instructed me that was one of the verdict according to the law of this State and according to the Oath that I have taken as a juror, that I would have a duty to consider, I don't [fol. 27] think I could obey the Court's instructions and the law and consider that a possible verdict. I don't think I could vote for capital punishment under any circumstances, regardless of what the Court instructs.

MR. COOPER: Challenged for Cause.

THE COURT: What is your name, sir?

JUROR: J. Wesley Alexander.

THE COURT: You may be excused.

MR. SMITH: The defendant would like to oppose the challenge for cause on the grounds of opposition to the death penalty, in that the sustaining of such challenges deprives the defendant of the ability to select from a true cross-section of the community.

THE COURT: Motion denied. Exception by the defendant. EXCEPTION # 2.

GEORGE MOORE

Passed by the State

Excused by Court—Cause challenge Defendant

RUFUS SHOFFNER—Examination by State:

I have conscientious or religious scruples against the imposition of capital punishment: I am kind of a churchman myself. I attend church at Springhill, Route 1. Denomination, A.M.E. Methodist. No, sir, I do not believe in capital punishment. I don't; I will just be frank with you. I don't. I don't think I would consider a verdict of that sort under any circumstances.

MR. COOPER: Challenge for cause.

THE COURT: All right, allowed. You may be excused.

Defendant Excepts. EXCEPTION # 3.

HUBERT L. HALFORD

Accepted by the State and the Defendant.

MRS. HASSIE R. DANIELS

Passed by the State. Excused by Defendant.

[fol. 28] JOHN Z. LUCAS
Passed by the State. Excused by Defendant.

HOWARD McCLAIN
PASSED by both the State and Defendant.

JESSIE ALBRIGHT
Passed by State. Excused by Defendant.

NELLIE D. STOUT—Examined by the State:

I do not believe in capital punishment. I would not under any circumstances consider such a verdict.

MR. ENNIS: Challenge for cause.

THE COURT: You may be excused.

Defendant Excepts. EXCEPTION # 4

WILLIE WAVERLY GWYNN—Examination by State:

I do not believe in capital punishment. No, sir. Regardless of what the evidence revealed, I would not consider that verdict, no more than I know about. No, I have to say no, sir.

MR. ENNIS: Challenge for cause.

THE COURT: You may be excused.

MR. SMITH: I would like to ask him a question.

THE COURT: All right.

Examination by counsel for Defendant:

The last think I said was as far as I know right now I couldn't go along with the death penalty. If I were to sit on the jury and the facts were proved such that the defendant committed an atrocious act, I would rather not pass the death penalty. If the Judge charges me and told me I must consider the death penalty, I would, if I had to. I would do what the Judge told me. Even if the Judge told me I had to go in the jury room and consider whether or not to bring in a verdict involving a capital crime, well, I think I would have to do what he said. Even if I didn't want to.

THE COURT: Do you believe in capital punishment?

JUROR: No, sir.

[fol. 29] THE COURT: The Court excuses the juror.
MR. SMITH: Exception.

EXCEPTION # 5.

THE COURT: During the noon hour, at 1:15, Mr. Richard Qualls on the special venire was examined by a doctor and I have a medical certificate from Dr. Blair indicating he should be excused.

THE COURT: The defense counsel, Mr. Norman Smith, objects to the Court in any instance during the trial Court's excusing any juror who states he does not believe in capital punishment. Let that show in the record.

PAUL K. CURTIS
Passed by both the State and Defendant.

W. H. TURNER
Passed by the State
Excused by the Defendant.

WILFRED B. CLARK
Passed by the State
Excused by the Defendant.

E. A. SHELTON—Examination by the State:

I do not believe in capital punishment. Even if I felt the crime to be severe enough, I would not consider capital punishment at all.

MR. ENNIS: Challenge for cause.
THE COURT: All right. You may be excused.

EXCEPTION # 6.

J. LUTHER JONES—Excused by the Court.

MRS. DENELA H. FULLER—Examined by the State:

I have conscientious or religious scruples against the imposition of capital punishment.

MR. COOPER: Challenge for cause.
THE COURT: The Court will excuse you.

EXCEPTION # 7.

DON LEE RATCLIFF
Excused by the State.

[fol. 30] VERNON E. JOHNSON
Excused by the State.

MRS. G. A. HENDRICKS
Passed by the State
Excused by the Defendant.

LENNIS WILLARD RATCLIFF — Examined by the State:

No, I do not believe in capital punishment, under any circumstances.

MR. COOPER: Challenge for cause.

THE COURT: You may be excused.

EXCEPTION # 8.

JOSEPH HOLT
Excused by the Court.

JAMES W. TRIPP
Passed by the State
Excused by the Defendant.

GARLAND HOWERTON
Passed by the State
Excused by the Defendant.

EVERETT W. MOORE—Examined by the State:

I don't believe that God gives me the right to condemn anybody to death. That is my personal belief. If the defendant was found guilty and I was to pass sentence on him, the foremost thought in my mind to render this verdict would be am I right in the eyes of God in taking this man's life. I don't believe I would consider voting for a verdict of guilty as charged which would require the Court to sentence him to death. No, I don't believe I have the right to consider that one of several verdicts.

MR. COOPER: Challenge for cause.

THE COURT: As I understand, you do not believe in capital punishment, is that right?

JUROR: No, sir. I don't think that I have that right to take another man's life.

[fol. 31] THE COURT: All right, excused by the Court.

EXCEPTION # 9.

THE COURT: Now, I believe the regular panel has been exhausted. We will now start with the special venire.

JAMES HOWELL
Passed by the State and the Defendant.

RAINEY REID HOOPER
Passed by the State and the Defendant.

LEO R. CRUTCHFIELD
Passed by the State and the Defendant.

COLLIE L. HALL
Passed by the State
Excused by the Defendant.

BILLY JOE SHOFFNER

THE COURT: Let the Court ask this question of you, as to capital punishment. When you speak of capital punishment, do you know what that is? You don't know what that means?

JUROR: No, I don't.

THE COURT: So, if you were asked whether you believe in capital punishment, you wouldn't know, because you don't know what it means.

JUROR: That is right, because I haven't been able to read and keep up with matters. I don't read the newspaper, because I can't.

THE COURT: I will excuse you, Mr. Schoffner. Go by the Clerk's office and prove your attendance.

EXCEPTION # 10.

BILLY PAGE
Passed by the State and the Defendant.

LEONARD D. HALL
Passed by the State and the Defendant.

DAVID L. SMITH—Examined by the State:

No, Sir, I don't believe in capital punishment. I would not consider a verdict that would result in capital pun-
[fol. 32] ishment under any circumstances. I don't believe in taking a man's life.

MR. ENNIS: Challenge for cause.

THE COURT: You may be excused.

EXCEPTION # 11.

MRS. EDNA FITCH—Examined by the State:

I do not believe in capital punishment.

MR. ENNIS: Challenge for cause.

THE COURT: You may be excused.

EXCEPTION # 12.

GLENN W. FISHER—Examined by the State:

I believe in capital punishment. I know what you mean by capital punishment. I consider by capital punishment is meant taking anyone's life. I believe the State has a right to take someone's life in certain circumstances. Not in a rape case. I understand this is a rape case you are trying along with two other charges. In this case, which is rape, which would be a capital crime in this State, I would not consider a verdict of guilty as charged. No, I would not.

MR. ENNIS: Challenge for cause.

COURT: Let me ask him a question. You do not believe in capital punishment in rape cases, is that what you said?

JUROR: Yes, sir.

THE COURT: All right, you are excused.

EXCEPTION # 13.

W. P. MAY, JR.

Accepted by the State and the Defendant.

DONALD H. HOLT—Examined by the State:

I do not believe in capital punishment; not under any circumstances.

MR. COOPER: Challenge for cause.

THE COURT: You may be excused.

EXCEPTION # 14.

WILLIAM D. PICKARD
Passed by the State.
Excused by the Court. Cause, Defendant.

[fol. 33] T. G. RICHARDSON
Passed by the State
Excused by the Defendant.

FLOYD STALLINGS—Examined by the State:

I don't believe in capital punishment under any circumstances.

MR. COOPER: Challenge for cause.
THE COURT: You may be excused.
EXCEPTION # 15.

JAMES LESTER BROWER—Examined by the State:

I do not believe in capital punishment under any circumstances.

MR. COOPER: Challenge for cause.
THE COURT: You may be excused.
EXCEPTION # 16.

FRANK ODELL HARRIS
Passed by the State and the Defendant.

JURY IMPANELED

MR. COOPER: Your Honor, please, I would like for the record to show at this time at the end of the selection of the regular panel, the number of peremptory challenges left to the defendant and the State.

THE COURT: All right. The peremptory challenges left to the defendant, according to my count, you have used 13; is that right?

MR. SMITH: Yes.

THE COURT: He has one left on that, plus you will have two each for each alternate, which gives five. The State, according to my count, has used two; is that correct?

MR. COOPER: Yes, sir.

THE COURT: You have four left, plus four additional, or eight.

THE COURT: Now, you will put this in the record: The Court finds that we are engaged in the trial of a capital case, wherein the defendant is on trial for the capital charge of rape, and in addition to two felonious charges of assault with intent to kill, in which a deadly [fol. 34] weapon was used, resulting in injury to the parties therein stated, not resulting in death. And the Court further finds that the trial is likely to be protracted, and therefore in its discretion, the Court orders that two alternate jurors be selected. You will proceed with the drawing of two alternate jurors.

JODIE McDANIEL—Examined by the State:

I do not believe in capital punishment under any circumstances.

MR. COOPER: Challenge for cause.

THE COURT: All right. You are excused.

EXCEPTION # 17.

BONNIE K. BURKE
Passed by the State
Excused by the Defendant.

R. N. DEFORD
Passed by the State
Excused by the Defendant.

J. W. PICKARD
Passed by the State
Excused by the Defendant.

GLENN BYRD JACOBS
Passed by the State and the Defendant.

WILLIAM E. OVERMAN, JR.
Passed by the State and the Defendant.

JURY IMPANELED

THE COURT: Members of the jury, all fourteen of you have been selected as the jury, plus two alternates, in

the trial of these three cases, one of which is the capital case of rape. It is very important that you listen carefully to what the Court is now saying to you, that is this: Throughout this trial, you will have the duty of not reading about this case, not listening to it on the radio or television, if such occurred, and you are not to hear anything stated about this case except what is stated here in the [fol. 35] courtroom in the way of sworn evidence. The Court also instructs you that upon leaving the courtroom and going home, and the Court will allow you to go home instead of placing you in custody overnight, that you will leave immediately as soon as you can do so, and you will go directly home or to your place of business or away from the courtroom and surrounding area, and when you return tommorow morning, or any day, you will come immediately to the jury room right here across from this door here (indicating) and stay there until the officer has you to come back into the courtroom. Now, we will ask you to come back not later than 9:20 in the morning; we reconvene at 9:30, and you will be in the jury room ready and available for Court when it reconvenes. Please remember these instructions, because it is absolutely imperative that you do so, because it is necessary in any case, and even more necessary in a case of a serious nature. Now, Mr. Sheriff. No one leaves the courtroom until I tell them to leave. Now, this jury will be excused until 9:20 in the morning. You may go at this time by using this door.

THE STATE'S EVIDENCE

MR. SMITH: The defendant would like to have the State's witnesses be sequestered during this trial.

THE COURT: The motion by defendant's counsel that the State's witnesses Monty Jones and Loretta Nelson be sequestered and separated during the evidence is allowed. Which will you want first, Mr. Cooper?

MR. COOPER: Loretta Nelson will be the first witness. I assume it is not necessary to sequester her.

THE COURT: Put in the record, the Sheriff will take Monty Jones out of the courtroom.

[fol. 36] MRS. LORETTA BRIGGS NELSON, being sworn, testified for the State, as follows:

I live at 704 Linwood Drive, Burlington. I am 21 years of age. No, sir, I do not know the defendant Wayne Darnell Bumpers. I have seen him prior to this date, on the night I was raped. I saw him July 31, at City Lake. It was down on the road, highway going down beside City Lake; you turn off on the right. Monty Jones was with me when I saw the defendant. It was about 7:30 at night. That day I went to church Sunday morning, and after church I went over to Monty's house, Monty Jones'. This was noontime. After that, Monty went with me down to my uncle's for a birthday dinner.

My uncle lives out near Roxboro. I spent about an hour at my uncle's house. I left my uncle's about 2:00 or 2:30 in the afternoon. Monty was with me then. Then we went back up to Monty's house. That is located on Lakeside Avenue, in Burlington. I stayed at Monty's house until about 6:30, when we left Monty's house. While we were at Monty's house, we were cutting up in the back yard and talking to his parents. I had supper at Monty's house that night. After supper, I got in my car and went out to City Lake and parked.

I have a '65 Corvair. I am not living with my husband. I am separated from him. I separated on November 19, 1965. No, sir, I have not lived with him since then. I had been going with Monty since January. I said that after supper I went out to park. How I happened to pick the place I parked is, we went riding and rode toward City Lake and I saw a road and backed up into it. After we backed into the road, Monty kissed me a couple of times and we talked and about that time Wayne Bumpers walked up. We had been there about ten or fifteen minutes before I first saw Wayne Bumpers. The first thing that occurred when he came up to the car was he tapped on the window and I rolled it down about two inches. He [fol. 37] asked me to open the door, and I said no. He

asked me to open the door again, and I said No. Then he put the rifle between the window, and I opened the door. I couldn't say what kind of rifle—just a rifle. When he put the rifle in the window, he told me to get out of the car.

After that, I got outside the car, and he said, "I want a white girl's p. . . . .," and he pointed the gun at me. I said, "No, I would rather die first." Then he pointed the gun at Monty, and he said, "Are you going to give it to me?" I said, "Yes." After that, he said, "Well, strip." So. I took my clothes off, and we walked around behind the car, and I laid on the back of the car, and he raped me. At this time the rifle was in his hand on the back of the car, pointed at the back window, towards Monty's head. At this time Monty was in the back seat. He was laying down, with his head laying part of the way down. Yes, in the back seat. When Bumpers told me to go around to the back of the car, he told Monty to get in the back seat. My position on the car at this time is that I was just laying on the back of the car. I had my clothes off.

At this particular time, the defendant said to me, "I hope you don't get blood on you, little lady." He had already hit me in the head with the gun. I don't remember when he hit me with the gun; I said something smart to him. That was before I got on the back of the car. He hit me on my forehead (indicating). Yes, sir, it bled.

When I was on the back of the car, the defendant did not take his pants off; no, sir, he didn't. He unzipped them, his pants. At this time, I think he had on dungarees, tennis shoes and a colored shirt, plaid with green in it. He had a zipper on his dungarees. Yes, sir, he took his private parts out. He then had intercourse with me. Yes, sir, he actually penetrated me with his private parts. This did not last very long, because I asked him [fol. 38] to stop before he got me pregnant. I don't remember what he said to that, but he stopped. After he stopped, I put my clothes back on, and he told us to walk down that road a little ways and across a white wooden bar in the road. We walked about 15 feet or more. While we were walking down that way, he was behind us with

the gun. After we walked down the road, he said, "Come on, I am going to let you go." So we went back up to the car, and he said, "Get in." So we got in the car, and he put socks on his hands; socks that you wear on your feet. When he did that, he said something about he was smart as a fox, or something like that. At that time, he said, "I don't want to leave any fingerprints on the car."

After that, he got in the car. He made Monty get in the back seat, and I was in the driver's seat. He got in the other seat, and he held the gun on Monty and told me if I tried to run off the road, he would shoot Monty. Then he made us drive off the highway and down a dirt road. We came to this little road on the left, and he told me to pull in and back out and leave the car on the main dirt road, and I did. He made us get out of the car and walk down the dirt road beside the road, down there in some bushes. He did not say anything while this was going on, I don't think.

After we walked down in the bushes, he told us to lie down on the ground. We were laying down, and he thought Monty picked up a stick and was holding my hand, and he told us to stick our hands up in the air. We did, and I kept begging him to let us go, because I said I had to go to work that night. I said I have to be home by 10:30 that night, because my brother would be worried about me because I had to go to work at 11:00 o'clock. I asked him to let us go. He said, "I can't do it; you will go to the cops." He said he was going to kill us. We begged for our lives, of course. After he made us lie down, Monty told him to tie us to a tree, that he wouldn't have [fol. 39] to kill us. He said, "What am I supposed to tie you with?" So, we told him that I had a white dress on the back seat of the car and a belt that goes to it, and Monty handed the belts and told him he could tie us to a tree with that and blindfold us with the dress. He made us walk back out to the car, and I got in the back seat and got the dress and my belts and walked back around where Monty was at, and he walked up to the door on the driver's side and took off his shoes. I am talking about Bumpers. He did not say anything when he took off his shoes that I remember.

After that, he made us walk back down through the woods and made me tie Monty to a tree with my belt. Monty had his hands behind him, behind the tree. I do not recall what size tree it was. I tied Monty to the tree. After that, Bumpers tied me to a tree, with Monty's belt. After he tied both of us, he ripped up my white dress and blindfolded and gagged Monty. Blindfolded him first. Then he gagged and blindfolded me. I don't remember how far apart the trees were; they were not very far apart.

I was not saying anything and the defendant was not saying anything while this was going on. After he tied and blindfolded me, he raped me again. He took my clothes off; I was tied to a tree. At this time, I was wearing Bermuda shorts and a poor boy sweater. I was wearing underwear, panties. He took my shorts and panties off and raped me again. On this occasion, actually penetrated my sexual organ with his privates. Yes, sir, he completed the act. He had an orgasm. His privates were inside of me when he did. While that was going on, he kept saying something about me being a little lady. That was all he said. During this time, he did not say anything to Monty.

After he had intercourse with me this time, he put my clothes back on, and he walked down and asked Monty where his heart was, and Monty said, "I don't know." [fol. 40] He stepped back and shot Monty, and then he reloaded the gun and shot me. I was shot through the left breast. The bullet went all the way through me. It came out right there (indicating). (The witness stands, faces the jury and indicates the point on her body where the bullet entered.)

THE COURT: You are indicating a point right under your left breast, is that correct?

WITNESS (continuing): Yes. (Witness indicates to the jury the position on her back where the bullet came out.) I am indicating a point just under my left shoulder blade. No, sir, I did not pass out when I was shot. The defendant did not say anything after he shot me. He just left. I heard my car crank up, and I called Monty, and he answered me. I heard my car leave then.

After the car left, I got my hands free, and I went down to Monty and untied him. Then we decided to go find some help. We didn't know where we were. It was a great big field out there, and I told Monty I was cold. So we laid down in the field, and I got warm. I told Monty we better go before he came back, and we went all the way across the field.

There was a big ditch there, and we jumped it and talked up the road to this farm house. We walked, yes, sir. We went to this great big white house. It was McPherson's house, I think. When we arrived at the house, I called for help twice, and a man answered and said, "What is wrong?" I said, "Will you come to your door; we have been shot." We were in his yard at this time, up on the porch. We yelled for help. Mr. McPherson came to the door. He asked us what happened, and we told him a Negro boy had shot us. After that, he went back in the house and got a gun and was going after him, and me and Monty and his wife talked him out of it. We told him to stay there. They called the Sheriff's Department and an ambulance. The ambulance came. I went to Alamance County Hospital in the ambulance. Monty and I both went in the same ambulance. It was [fol. 41] around eleven o'clock when we got to the hospital.

From the first time we saw the defendant Bumpers, until we got ourselves loose, was about an hour and a half. During that time I had an opportunity to hear him talk. I got an opportunity to look at his face, when he opened the car door. The light in the car come on. It was a full moon out there that night otherwise; we could see pretty clear.

When I got to the hospital, they took me to the emergency room, that is all I remember. I do not know what they did to me. I did not pass out; I had so much dope. I was so sleepy and drowsy, I don't remember. I think they gave me a shot. I stayed in the hospital two weeks. They did not operate on me while I was there. I just lay there. I suppose they dressed my wounds. I had occasion to talk to Sheriff John Stockard and S.B.I. Agent Minter while I was in the hospital. I talked to them about the

third day I was in the hospital; I am not sure. Mr. Minter and Mr. Stockard went in together when I talked with them. On that occasion the Sheriff and Mr. Minter showed me some pictures, a whole lot of them. I don't know how many, I would say around thirty or forty. They asked me if I could identify any of the pictures. I selected one picture out of the group as being a picture of the person who assaulted me that evening. I indicated that picture to Sheriff Stockyard and Mr. Minter at that time.

Of the group of twelve pictures in the manila envelope, marked State's Exhibit No. 1, this one, marked State's Exhibit No. 1A, is the one I indicated to Sheriff Stockard and Mr. Minter as the photograph of the person who had assaulted me on July 31. At the time I looked through the pictures the Sheriff furnished me, I had a conversation with Sheriff Stockard and Mr. Minter as to the events that occurred that night. I told them what happened to me. At that time I did not know the defendant Wayne Darnell Bumpers. I did not know his name. I did not tell [fol. 42] the Sheriff the name of the person who assaulted me. A member of my family was present during this visit of Sheriff Stockard and Mr. Minter to the hospital; I don't remember who it was; on one occasion, my sister was with me.

I talked with the Sheriff and Mr. Minter on several occasions. Later on, I had occasion to go to the Alamance County jail and observe a group of Negro males at the time, ten or twelve, I recall. At that time, I did not see the defendant Bumpers among the group at first; I was too afraid to look. I observed this group of men two times. On the first occasion I did not recognize the defendant Bumpers as being in that group, because I did not look. No, sir, I did not look at any of them. Later that day I went back and looked at them again. About five minutes after the first time. On the second occasion, I looked at the faces of all of the men. I saw a person I thought I recognized as Bumpers. Subsequent to that, I told Sheriff Stockard which one I thought was the defendant.

Dr. A. D. Tate, Jr. treated me while I was in the hospital. He made a pelvic examination of me at that time.

That was the first night I went over there. I recognize in the courtroom at this time the man that assaulted and shot me on the evening of July 31 (indicating). I am indicating the man sitting next to Mr. Norman Smith at the next table.

CROSS EXAMINATION

I am 21 years old. I was married October 26, 1963. I have only been married once. My husband is Bobby Warren Nelson. He is in the Army. He stationed at Fort Sill, Oklahoma, I think. Back on July 31st he was in the Army. No, I do not know whether or not he was on furlough awaiting some post of duty at that time. I do not know whether he was then at Fort Sill. I don't have any idea where he was at that time. I do not know now where his place of duty was; he wrote me a letter since then. I have been going steadily with Monty Jones since January [fol. 43] of 1966. I had not been dating anyone else. I went out with Monty just week-ends, twice on week-ends, once on Saturday and once on Sunday, ordinarily. I had had sexual intercourse before the night of July 31. No, sir, not with Monty Jones. I had gone with him steadily since January. I was parked with him. No, I wouldn't say I was in the habit of doing that. I park with him just once in awhile. I parked with him maybe once out of a month. We would no go to any particular place. I had never been up to this location near City Lake before.

I said I left Monty Jones' house about 6:30. Before we stopped at the City Lake, we drove Main Street a couple of times and rode around and went to City Lake riding. I would say we spent about half an hour driving around town. We did not stop anywhere. We did not get anything to eat; we had already eaten supper. We got out to City Lake about 7:50. On direct examination, a few minutes ago, I testified we got there about 7:30. I don't remember exactly what time it was. I didn't look at my watch that often. I had the radio on at the time. I was playing the radio while I was sitting there in the car with Monty Jones. The sun had gone down. No, sir, it was not dark; there was a full moon. Night had set in,

though. No daylight left. It was a clear night. The moon was already up.

I said my attacker came along shortly after I had arrived at the City Lake. We were riding out by City Lake and rode by this dirt road, and I backed the car up into it. I was driving; it was my car. A 1965 Corvair. It is a Corporal. The interior light on that cas is overhead. When you open the door it turns on and with the light switch. From the time my attacker came until the time he drove away in the automobile, I guess we were there about half an hour. Well, we were standing talking, of course. We were asking him to let us go, and I said something smart to him, and he hit me in the head. Then he [fol. 44] put me on the back of the car—I got on the back of the car myself; it isn't high. It is the hood, but it is in the back of the car. It slants down. My feet were on the ground. I physically resisted the attack. I grabbed the gun one time, and he drug me across a bush. No, all this time Monty was not laying in the back seat of the Corvair.

Before Bumpers told me to go around to the back of the car, Monty was in the front seat and Bumpers made Monty get in the back of the car. I went around the back, and he had the gun pointing at Monty's head. He pointed the gun at Monty's head while the two of us were on the back on the trunk. Laying back there, he had his hand on the trigger. While it was laying back there it was pointed at Monty's head. Monty had his feet in the seat back against the car, and his head was sticking up where Bumpers could see and shoot him.

No, sir, I have not lived in Alamance County all of my life. I am from Roxboro. I came here from Roxboro in 1963. These are the only two places I have lived. I live with my oldest brother now. I do not have any children. I am employed. I work at Glenn Raven Cotton Mill. I was working there prior to July 31, also. As far as I know, I am physically recovered from the attack. I intend to divorce my husband. I intend to remarry some day. I have no present intentions to remarry.

After I was first attacked, we went to a second location, in a direction away from City Lake. It was about

three or four miles. I was driving. I was not watching the speedometer. Yes, sir, my attacker drove the car on one occasion; he drove it away. Not while we were with him in the car; after he shot us and left us. While I was driving the car between the place of the first attack and the second, the gun was laying across the front seat pointed at Monty. I do not have any idea what time it was when we got to the second place. I said it might [fol. 45] have taken as much as thirty minutes at the first place. It was about 8:45 or something like that when we got to the second place. I said we arrived at the first place between 7:30 and 8:00 o'clock. I think we were there about ten minutes before the attacker came. And he was with us for thirty minutes. I guess that would make it sooner than 8:45 when we got to the second place. I don't have any idea how long we were there before we were abandoned.

I don't know what time we got to Mr. McPherson's house. I do not know what time the ambulance came. While I was in the hospital, the Sheriff and Mr. Minter from the S.B.I. came to see me about the third day, Wednesday. I don't remember exactly what conversation took place between me and the Sheriff and Mr. Minter that day. He asked me if I thought I could identify the person that did that, and I told him I thought I could. He did not say he had arrested somebody already. I looked at the pictures awhile ago, labeled State's Exhibit No. 1. There were twelve pictures. I don't remember exactly how many pictures there were when the Sheriff brought them to me that day. Awhile ago I said thirty or forty. I think this is the total number of pictures he brought to me. Two of these pictures actually appear to be of the same person, the two you indicate.

COUNSEL FOR DEFENDANT: I will ask that these be identified as Defendant's Exhibits 1 and 1A.

WITNESS (continuing): These are the pictures we referred to a moment ago; these two pictures are the same. At the time I talked to the Sheriff and the man from the S.B.I. I did not have any notion where the person was, from who attacked me, what part of the County,

or anything like that. No one said anything to me about a local man. One of these pictures is marked North Carolina Prison, Raleigh.

COUNSEL FOR DEFENDANT: I ask this be marked for identification as Defendant's Exhibit 1-B.

[fol. 46] WITNESS (continuing): This picture is marked Defendant's Exhibit 1-B, the one you showed me a moment ago, with Raleigh on it. I had made some kind of description of the person who attacked me before the Sheriff brought these pictures. I described him to the Sheriff's officers. I described the person who attacked me, he had thick lips, real dark, was wearing dungarees, plaid shirt with green in it and tennis shoes. I don't think I said anything about whether he was fat or thin. I tried to tell the Sheriff as much about him as I could. I tired to help him and provide him with as good a description as I could.

I had never seen this defendant before July 31. I know I saw him July 31. In my own mind I am certain, and nothing could really dissuade me from it. I haven't made up my mind; I know.

With respect to the line-up conducted in the Alamance County jail on the first time the people were lined up that I looked at, I walked in, stared at the floor and turned around and walked out. I was there long enough to know that a group of men were standing there. I glanced at a number of them. I glanced in the direction of the center; I just glanced up. I did not make any identification the first time. When I walked back out, I said No. 6. They were holding numbers, and we were supposed to tell them which number he was, and I was afraid to look at him. I didn't look at the face; I looked at the number. I told the Solicitor and the Sheriff something about No. 6 and hadn't looked at any faces, just looked at a number, because I was afraid to look at him. No, sir, I did not know he was No. 6 when I went in. I didn't even know which number he was the first time.

THE COURT: Let's stop right here a minute. You say No. 6 the first time you walked in there?

WITNESS: I said No. 6 after we came back outside.

[fol. 47] THE COURT: The first time?

WITNESS: Yes, sir.

WITNESS (continuing): I told Sheriff Stockard I was afraid to look at him, and I told him if he would let Monty go in there with me, I would look at them. I said No. 6 because I was afraid. I did not say No. 10, No. 1, No. 2, but said No. 6, because that is the one I glanced at. No, sir, I did not think No. 6 was the one who attacked me.

After that, Monty and I went in together. Then I identified Bumpers as being No. 2. I don't remember exactly where he was standing in line. I don't remember left, right or center. The second time I was in there, the people were required to call out their names, their first names. I knew the name of the person who was being held by the police was Wayne Darnell Bumpers.

I have never been convicted of any criminal offense.

I have seen the defendant on another occasion besides the time in the line-up and today; on July 31. I have never seen him any other time. Prior to the line-up I had seen pictures in the hospital. At that time, I had been given a pretty good impression of what the man's face was like in the picture. After the picture was given me, I did not have a better idea who he was then my recollection from the night of July 31. I remember him from July 31. Yes, it was dark July 31. It was full night. I was scared to death throughout the entire time I saw him. Not from the first minute he tapped on the window of the car; not until he said, "I am going to have to kill you." I was not excited when someone came and tapped on the car window when I was seated there.

At the time my attacker came up to the car, when I rolled down the window, he was standing up. All I saw at the moment was the rifle sticking between my eyes. I did not see his face at first. When I first got out of the car, I wasn't afraid. No, I was not afraid when the man made [fol. 48] me get out of the car and holding a rifle on me, because I thought after he asked for money, he would let us go. I thought we were going to be robbed. No, that did not cause me to be frightened or excited. In the hos-

pital I did not turn the pictures over and look at the names on the back. Yes, there are names on the back of them. I found out about one name on there awhile ago. I don't know how many names are on the back of them. I discussed my testimony today, in preparation for the trial, with Mr. Cooper.

REDIRECT EXAMINATION

In the conversation I had with you before the trial you told me to tell the truth.

MANSON MARVIN JONES, JR. testified for State:

My full name is Manson Marvin Jones, Jr. They call me Monty. I am eighteen years old. On Sunday, July 31, I got with Loretta Nelson sometime during the day. I first saw her after church, about Noon Sunday, July 31. I don't remember where I first saw her. Anyway, I got with her. I spent that afternoon with Mrs. Nelson. We went to dinner near Roxboro. This was some of her people. We got back from Roxboro about 5:00, something like that; sometime Sunday afternoon. I went to my house, and she changed clothes. She changed into a blue pair of shorts and a sweater-like thing. She had on a white dress before. My mother and father were at the house when Mrs. Nelson and I arrived. We stayed there and talked with them a little while. I had supper that evening at home. I ate with my parents. I left there with Mrs. Nelson, in her car, a '65 Corvair. Just me and Loretta left. It was about 6:30 or 7:00 o'clock when we left. We went riding for a little while, toward City Lake. I can't remember if we went riding anywhere else other than that. Yes, we went some place and stopped; she crossed some bridge, we turned left down that road, and [fol. 49] there was a dirt road, and she pulled into it. I am not familiar with the area around City Lake. I have never been out there to my knowledge before. It was dark when we arrived at this place where she pulled

off. I don't know what time. She pulled in frontwards and backed in. It didn't say anything about being a private drive. It was a field road. After we parked, I kissed her. I saw somebody that night other than Loretta. In about fifteen minutes Bumpers come and knocked on the window with a gun. I am indicating the defendant. He had a .22 rifle in his hand.

The first thing he said to me was, "Roll down the window." He was on the driver's side. She was still in the driver's seat. I was on the right-hand side. After he told us to roll the window down, he told Loretta to get out. At this time, he had the gun pointed at us. Loretta said, "No," at first, and finally she rolled the window down. After he told her to get out, well first he asked for money. He asked if we had any money, and we told him no, and we give him what little money we had. I was in the car at that time; he made her get out. I gave him about three dollars. That was all the money I had. I don't know what she had. She gave him some money.

After the money was given, he said that he wanted a white girl's p. . . . . I don't remember him saying anything else. He said he would kill her if she didn't give it to him, and she said she would rather die. He didn't say nothing then; he pointed the gun at me. I don't know whether he said anything, and she said, "All right." Then he told her to take her clothes off. No, I was not still in the front seat at this time; he told me to get in the back seat. Yes, he had the gun pointed at me at this time, not at her. She was outside against the car and he was back of her when I was told to get in the back seat. She grabbed the gun before it happened, and I crawled out the window and he got the gun back on me by the time [fol. 50] I got out, and he told me to get in the back seat and lay down, and he told her to take her clothes off. She took her clothes off. I didn't see nothing after that. All I could see was the gun up there on the back. This is a Corvair automobile. The back glass ain't too very big. The gun I saw I could see it through the back glass of the car; it was going across the trunk, the hood.

At this time, I was in the back seat of the car. I could have seen what was happening at the back of the car, but

I didn't. I tried to get out one time and he had the gun back on me, and the next thing I knew she was beside the car putting her clothes back on, and he told me to get out and walk down the road; told us to cross this bar that was across the road. Something put there to keep people from going down there, and I reckon it was steel or wood, iron or something. Yes, I walked down the road. Then he told us he was going to let us go. He told us to go back to the car. Then he got back in the car, and he told us to get in the car. He decided he wanted to go somewhere. He got in the car with us. Loretta was driving. He was in the front seat, and I was in the back seat. He had the gun on her and told her to go down the road.

We went down the paved road and got on the dirt road, down the dirt road a little ways, and we passed the road and he told her to back up. Bumpers was directing Loretta where to go. He would tell her which way to drive. He told her to back up in the road, and she backed up and turned around and he told us to get out; made us walk down the road. It wasn't a real road, it was more like a little drive or something; a field road. That was the road we had to walk down. We were walking down the field road or path. We did not go down that path too far; I don't know; not very far, about a block, not quite that much. Then he told us to lay down on the ground. While we were walking down the road, the defendant kept [fol. 51] saying he was going to kill us. All I heard him say is he was going to kill us. We tried to get him to let us go. She told him about tying us up and leaving us and taking the car. We told him we were married, and he would say, "I got to kill you." He said, "I got to kill you," making a noise-like. Made a noise with his teeth. He did not say anything else while walking down the road, as I recall. We was laying down on the ground. He asked if we had a stick, and we told him no, and he made us raise our hands, and then I told him about the belts and everything. I told him that he could take the belts and tie us and take her dress and blindfold us and leave us, and we wouldn't know which way he was going; that he could escape. He said he would do it.

He walked us back up to the car. This was after we laid on the ground. He was walking behind us. He still had the rifle in his hand. It was pointing at us. After we went back to the car, we got the belt and the dress and everything, and he walked us back down there. Loretta got the belt. He did not make any other statement while walking us back down to the place where we were laying down as I remember.

After we got back down in the woods, he made Loretta tie me up to a tree, and then he tied her to a tree. I was tied to the tree with rope; she tied her dress with a belt. It was a rope belt that ties a dress; a sort of cord. I was tied to the tree about like that (indicating); my hands on the opposite side of the tree from me. I was standing up. The tree I was tied to was about three car-lengths from the one Loretta was tied to. No, I could not see her from where I was. He blindfolded us after she tied me up. He blindfolded me with her dress. Just a few minutes it was quiet. Then he came over to me and felt my heart and asked if I was scared. He asked me where my heart was, and then he shot me. When he asked me where my heart was, I made no answer to that. When he asked me if I was scared, I don't think [fol. 52] I made any answer to that. I did not pass out when I was shot. I remember, I was conscious after that. I couldn't see anything; I was blindfolded. I slid down the tree; pulled the gag out of my mouth. I pulled that out and slid down the tree. After I was shot, I heard him go to the door of the car and take off.

I heard him shoot Loretta. I didn't hear anything after he shot Loretta. It was a few seconds after he shot me that he shot Loretta. I heard the car pull off. I was shot here (indicating to the jury). It went in right there (indicating). I am indicating now about the breastbone, in the middle of the chest. The bullet lodged in my back. It was still in me after I was shot. The doctor took it out three days after I was shot. The bullet lodged right back here (indicating). I am indicating a point four inches under my left arm; went down in my stomach and come back up. I don't know the doctor's name who took the bullet from my side; there were three or four of them.

This was in Chapel Hill hospital. I was transferred to Chapel Hill hospital. I stayed in Chapel Hill hospital two weeks.

I have recovered from my wounds. While I was there the doctor sewed up both sides of my stomach, took out my spleen and did something to my lip. I was operated on, the night I got there, Monday morning, August 1. After I heard the car start and drive away, I heard Loretta call me. I was able to answer. She asked if I was all right, and I told her yes. The next think I knew she was over at me trying to untie me, and I threw up, vomited. She got me loose. Then we went down across the field and rested in about the middle of it and walked down the road off the field. I got tired and went in the field, the other side of the field, and rested. I rested the second time. Then we walked down the road a little ways and seen this house and it looked dark. We didn't want to go down there, and we walked on to the next big house. I told her to holler for help, because I couldn't, and she [fol. 53] did. That was Mr. McPherson's home. We went to the home in that area. A man and a woman were there. We told them we had been shot, and the man came out there. I told him to call an ambulanee, and I was taken to the hospital. I have talked to the Sheriff and Mr. Minter about this occasion and told them what happened to me. The first time I saw them was in the hospital, not the Sheriff, but two policemen. I don't know who they were. They told me that they were members of the Sheriff's Department of Alamance Conty. They talked to me after I went to Chapel Hill, after the operation.

I went to the Alamance County Hospital. I stayed there about half an hour at the most. Then I was transferred to Chapel Hill hospital. The men who came to see me at the hospital in Chapel Hill showed me some photographs. I do not recall how many, it was a lot of them.

State's Exhibit No. 1 which you hand me are the photographs shown me at the hospital in Chapel Hill. They asked me to identify one of those photographs as my assailant, if I could. I did that. I am indicating State's Exhibit 1-A as the one I identified. I do not see either

of the men I talked to in the hospital here, neither Deputy Sheriff, or Sheriff, or anyone. I know that the man sitting beside you is the Sheriff; I don't know whether he came over there or not. Since July 31st and prior to that date, I had seen the defendant Wayne Bumpers in the line-up over at the jail. There were ten or fifteen people in the line-up. They had numbers, and he told me to tell which number it was. I told which number it was. That number was 6.

The rifle my assailant had on me out there July 31 was a .22 rifle. I couldn't tell too much about it. I was looking in the barrel most of the time. I wasn't looking at the gun very much. I couldn't identify it. I recognize the gentleman with red hair behind you. He is the one [fol. 54] I talked to in the hospital. He showed me the photographs you have shown me.

THE COURT: For identification purposes, the one with the red hair could be a lot of folks.

MR. ENNIS: Mr. J. N. Minter, of the State Bureau of Investigation.

WITNESS (continuing): I see the man who assaulted me on July 31 in the courtroom. (Witness indicates the defendant.) I am indicating the defendant Wayne Darnell Bumpers.

CROSS EXAMINATION

I do not recall when the officers first talked with me. They talked with me while I was in Chapel Hill. The attack took place on Sunday; they came the week following, the first time they came. They came twice. I don't know if it was the middle of the week; I slept most of the time. I can't say whether it was toward the middle of the week or end of the week. When they came in the hospital they asked me if any one of these was the one that shot me. Before they showed me the pictures, they told me they were policemen. They asked me what he looked like, before they showed me the pictures. I said he had a thin face, big nose. I don't remember saying anything else. This was the same day when the Sheriff and the S. B. I. came. I described my attacker to them. They produced pictures. I had not seen any law enforcement officers prior to that time that I remember.

I don't remember if I was interviewed that night at Alamance County Hospital. We got out to City Lake to park right after dark. It had become full dark. It was not a dark night, it was a full moon. After we left my house and before going to City Lake, we rode around a bit. I couldn't tell you where we went. Mrs. Nelson was driving the entire time. I do drive. No particular reason for choosing this place that we decided to park in. I reckon we went out with the intention of parking that night. I said awhile ago "making out." I meant just [fol. 55] kissing her; that is all. It doesn't carry any more meaning that that for me. I have heard it used to mean other things. I had been going with Mrs. Nelson about four months. I met her last year, when it was snowing. That was during the winter. After that, I did go with her right much; I would say steadily. I did not date other people. I took her out every weekend. We did park, not frequently. I had never had sexual relations with Mrs. Nelson.

The attacker came along and rapped on the door about fifteen minutes after we had got out on the scene. He was with us at the place about a half hour before we all drove off, something like that. I couldn't tell how far we went when we drove with him; I was looking at the gun. It would seem like a long time, ten or fifteen minutes. I did not try to escape at any time during this entire occasion. I told Loretta to stop, one time, when we were going in the car. That is when the attacker was in the car with us. I told her to stop before we turned on to the dirt road.

When we were back at the little road near City Lake, the gun was pointed at her and me off and on. While she was on the back of the car, the gun was actually pointed across the top of the car, the barrel was not aimed at me. I seen the gun. When I tried to get out, he had the gun back in his hand. This was a two-door automobile. I am eighteen. I was not 17 at the time. I turned 18 March 29th.

I have no idea what time it was when we arrived at the second place off the gravel road. We stayed there about 45 minutes, something like that; before we com-

menced moving off to find a place to get some help. I think it took about 10 or 15 minutes to get to Mr. McPherson's house. I have no idea what time we got to his house. No, sir, I am not a native of this area. I was born in Durham; moved here when I was little. I work at Throwing Mill, in Swepsonville. I am able to work. I [fol. 56] have no record of conviction of any crime or offense. I had never seen the defendant prior to the time I though I saw him July 31. I have seen him only once since then, in that line-up. And again today, in court. I looked at the men in the line-up twice. I went through alone the first time. The first time, I just walked down and walked back. I looked at all faces, going both ways. I decided that the person who attacked me was standing at a particular place in the line, about the middle. I don't know, facing the line-up, toward the left or the right of the middle. I think toward the left. He was carrying number 6.

After the first line-up, I told them the number. I told the Sheriff, I think. For the second line-up, me and my girl friend both went in. This time the people present were required to call out their names. This man called out the name "Wayne Bumpers."

I am not married. I have never been married.

I was tied to a tree at the second place we were taken. I couldn't tell nothing was going on where Loretta Nelson was. I had a gag in my mouth tied around the tree and blindfolded. My ears were not covered up. She tied me up first and then Bumpers tied her. I do not know if this took place one night after the other, with not much time in between; I was tied to a tree and blindfolded. I don't know how soon she was tied up after that. He came back with the gun in a few minutes. It wasn't too long. Everything went quiet. I could hear him moving his feet. I was scared. I was scared from the first moment this person came up to the car, and I was scared until he went away and even after that. Much of this took place in a wooded area. There were a good many trees around, and that had a tendency to make it considerably darker. At the second location, the car was pointed from the road, pointed left to right, from the road we were on

back to the woods; it was pointed right. It was pointed parallel to the gravel road. It was not facing into the [fol. 57] woods. The headlights were not beaming back into the woods. In the first location over near City Lake, the car was backed up into the road. The headlights of the car were facing out toward the road. Most of the things that took place over there were to the back of the car and the side of the car. There wasn't no woods there; it was open. The second place was in a wooded area. I did not hear the car stop on the road just before the man came up to our window.

Loretta Nelson and I have talked about our impressions of what took place since July 31. Several times. In our discussion we came to substantial agreement as to what took place. There were some points that were different between us originally. She seen him put his shoes in the car, and I didn't. I don't think there were any other points that were different.

I have talked to the people from the Sheriff's Department or other officers in connection with this case about five times, I believe. Twice in the hospital. One time in the recovery room, after I got out of the operating room, at Chapel Hill. Once in the line-up. That is all—only three times. Once at the hospital, the line-up, and that is about all.

I seen my attacker in the car. I knew what he looked like. I seen him in the car. I only knew what he looked like. I was with Loretta Nelson this morning when she came up here. I talked to her. I have not talked to her at all since she testified.

REDIRECT EXAMINATION

Before he got in the car one time, he put his socks on his hands, said he was going to be smart, so there would be no fingerprints. When I got back to the officers, I didn't describe the approximate location this took place.

JURY EXCUSED.

[fol. 58] The following matters were heard IN THE ABSENCE OF THE JURY.

THE COURT: Where is the motion to suppress now? You will recall, last week I had certain motions to be heard, motion to suppress evidence filed by the defendant's counsel. Procedure-wise, I have the motion before me and the petition to go forward with the evidence, but it is on an either/or basis here.

MR. COOPER: If you recall, the motion to suppress included certain clothing of the defendant which the State advised Your Honor last week we had no objection to, and we are not resisting that part of the motion.

THE COURT: There is a motion here that says the property seized against the will of Mrs. Hattie Leath and without a search warrant. Now, the question is, are we going into the search warrant?

MR. COOPER: The State is not relying on the search warrant.

THE COURT: Are you stating so for the record?

MR. COOPER: Yes, sir.

THE COURT: All right, then there is no search warrant question involved then; it is only permission?

MR. SMITH: Your Honor, I will confine the ruling, then, only to suppress and consent. I have already submitted affidavit.

THE COURT: Yes, I have that affidavit right before me.

MR. SMITH: I would like to know if the State would like to examine it.

THE COURT: All right. They are here available for cross-examination. They have made an affidavit of which [fol. 59] you have a copy.

MR. COOPER: I have some of them.

THE COURT: If you do not have her affidavit, here is a copy. Here are two copies with the original, if you would like to have them, Mr. Solicitor.

MR. COOPER: I have copies which counsel furnished me. I though he had filed additional affidavits.

THE COURT: I am considering the affidavit of Mrs. Hattie Lee and affidavit of Ronald Vaughn. Do you have those two?

MR. COOPER: Yes, sir.

THE COURT: You desire any further cross-examination of them?

MR. COOPER: Motion to suppress, Your Honor, please. For the record, Your Honor, please, reading from the original motion to suppress to indicate that the motion part of which we are concerned at this time, reads as follows: "Wayne Darnell Bumpers, the defendant in the above entitled action, hereby moves this Court to direct that certain property of which he is the owner, namely, one pair of overall pants, one shirt and one pair of tennis shoes, certain property of which his grandmother, Mrs. Hattie Lee, is owner, namely, one .22-caliber Remington rifle, and which on the afternoon of August 2, 1966, at his grandmother's house in Faucette Township, Alamance County, North Carolina, was unlawfully seized and taken from his grandmother Mrs. Hattie Lee and from her premises by four deputies and the Sheriff of Alamance County, whose true names are unknown to the petitioner, be returned to him and to Mrs. Hattie Lee and that it be suppressed as evidence against him in any criminal proceeding. The petitioner further states that the property was seized against his will and the will of Mrs. Hattie Lee and without a search warrant, as more fully shown by [fol. 60] the affidavit of Mrs. Hattie Lee and Ronald Vaughn attached hereto as Enclosures 1 and 2." It is my understanding the motion here involved only the .22-caliber Remington rifle which the motion alleges belongs to Mrs. Hattie Lee.

THE COURT: Is that correct?

MR. SMITH: That is correct, Your Honor.

THE COURT: Now, before I go any farther, I will make this remark as to your request here. You request that I change the name of Hattie Lee to Hattie Leath?

MR. SMITH: Yes, sir. It is stricken out in the original.

THE COURT: No, it is not.

MR. SMITH: It is not?

THE COURT: It is in the affidavit, but not in the motion. All right, now, go ahead, Mr. Smith.

MR. SMITH: First, Your Honor, I hope by the Solicitor reading this in the record he does not intend to

read it to the jury. I don't think anything connected with the motion to suppress constitutes admission.

THE COURT: Just for the record; that's all.

MR. SMITH: First, Your Honor, let me mention that the Statements of fact in the memorandum of law are not precisely correct statements contained in the affidavit, certain house where Mrs. Leath lives is closer to one mile than two miles from the road and there are a couple of other slight discrepancies. The memorandum was prepared in advance of the affidavit. I will refer to the affidavit. I don't think there is any material difference, but I didn't want to put myself in the position of placing things before the Court that are not fact. Now, with respect to the voluntary consent for seizure of items at [fol. 61] the subject premises, the cases disclose that there are four general rules, and one of these is that the burden is upon the State to prove voluntariness of the search and seizure.

MR. COOPER: If I might interrupt, if we could get the evidence in prior to the argument.

THE COURT: All right, sir. He has introduced two affidavits. Now, I think before we go into your brief we will have the evidence.

MR. COOPER: I take it the affidavit of Ronald Vaughn we are not involved with at this time, because it pertains only to clothing which has been returned to the defendant or made available to him at his request.

MR. SMITH: Right.

THE COURT: We have the affidavit of Mrs. Leath?

MR. COOPER: Yes, sir, and I would like to cross-examine her.

THE COURT: All right. Come forward, Mrs. Hattie Leath.

THE COURT: Let the record show this is still in the absence of the jury.

MRS. HATTIE LEATH, being first duly sworn, testified on DIRECT EXAMINATION as follows:

My name is Hattie Leath. I stay on Union Ridge, City Lake. I stay on Mount Vernon Road, almost a mile

off the highway. This highway is Mount Vernon Church Road. I am on a dirt road about a mile off the Mount Vernon Church Road. I own my own house; it belongs to me. I have two grandchildren stay with me, and I have another boy by the name of Kenneth Lee Olver lives with me, and then I have my own son, Junior. These folks were living with me in July 31. The defendant Wayne Darnell Bumpers was living with me on that date. He had been living with me practically all of his life, off [fol. 62] and on. I have raised him. He is nineteen years old. He has been living with me at this place all of his life. This place is just nowhere hardly from City Lake, about 200 yards right down on the lake.

On July 31st I owned a .22-caliber Remington rifle. I have owned it since my husband bought it. That is it.

MR. COOPER: I would like to have this marked for identification as State's Exhibit No. 2.

WITNESS (continuing): I recognize State's Exhibit No. 2 as being my rifle. It wasn't taped up like this on July 31.

THE COURT: No, the tape was not on it when you had it.

WITNESS (continuing): That is why I see a difference. No, I do not see any difference other than the Scotch tape being on the stock, according to my remembrance. I am just going to tell you. It has been a long time since the last time I took a look at the rifle. I did have a .22-caliber Remington, single-shot rifle at my house on July 31. Most of the time it stayed inside the wardrobe and then behind the door, out from the living room. This is my rifle.

Sheriff Stockard came out to my home about August 2, sometime about that. I reckon about two o'clock in the afternoon; I didn't notice the time. (Sheriff stands.) This man standing up beside you looks kind of like one of the men. Four of them came. I was busy about my work, and they walked into the house and one of them walked up and said, "I have a search warrant to search your house," and I walked out and told them to come on in. That little light-headed one younder was that one; not light-headed, but red-headed or something. (Mr. George stands.) That

is not the one. (Mr. Poe stands.) This is not the one. (Mr. Minter comes forward.) That is him. He just come on in and said he had a warrant to search the house, and he didn't read it to me or nothing. So, I just [fol. 63] told him to come on in and go ahead and search, and I went on about my work. I wasn't concerned what he was about. I was just satisfied. He just told me he had a search warrant, but he didn't read it to me. He did tell me he had a search warrant. I don't know if Sheriff Stockard was with him. I was not paying much attention.

I told Mr. Stockard to go ahead and look all over the house. I had no objection to them making a search of my house. I was willing to let them look in any room or drawer in my house they wanted to. Nobody threatened me with anything. Nobody told me they were going to hurt me if I didn't let them search my house. Nobody told me they would give me any money if I would let them search. I let them search, and it was all my own free will. Nobody forced me at all.

CROSS EXAMINATION

When the officers asked me to let them search, well, I will tell you what I thought about, what went through my mind. They didn't tell me what they was searching for, what it was all about. They didn't talk to me at all. They just went ahead. I had in mind what they was looking for and searching for, I felt like, well, whatever they was looking for they would find it, and I didn't think it would amount to anything with the boy, and I just give them a free will to look because I felt like the boy wasn't guilty. I am telling you what I though about it.

No, I did not think at all whether he had a rifle to keep them out of the house. I wanted them to be satisfied. He said he was the law and had a search warrant to search the house, why I thought he could go ahead. I believed he had a search warrant. I took him at his word. I though the search would be valid and there would be no reason to look at it; that is what I thought about it. When they first came up, I was there in the back room doing something. I don't know what I was doing,

but I do my housework back there in the kitchen. No, they [fol. 64] did not come into the house before I got to the door; they come to the door. No, they did not knock because I walked in the door. I saw them coming. I just seen them out there in the yard. They got through the door when I opened it. At that time, I did not know my grandson had been charged with crime. Nobody told me anything. They didn't tell me anything, just picked it up like that. The didn't tell me nothing about my grandson. (WITNESS EXCUSED.)

MR. COOPER: I have no further evidence to offer at this time on behalf of the State. I think the defendant's witness has proved the search was purely voluntary.

THE COURT: Anything further?

MR. SMITH: No, just argument.

THE COURT: It is not necessary that the argument be taken by the consent of the Court, Mr. Smith and Mr. Cooper, the Solicitor.

THE COURT: The Court finds that from the evidence of Mrs. Hattie Leath that it is of a clear and convincing nature that she, the said Mrs. Hattie Leath, voluntarily consented to the search of her premises, as is more particularly set forth in her evidence, and that that consent was specifically given and is not the result of coercion from the officers. MOTION DENIED for suppression of the evidence with reference to the .22-caliber rifle, marked State's Exhibit No. 2.

EXCEPTION to the ruling of the Court by the defendant—EXCEPTION #18.

(JURY RETURNS TO THE COURTROOM)

J. N. MINTER testified for the State:

My name is J. N. Minter, Special Agent for the State Bureau of Investigation. I live in Reidsville. I have been employed by the North Carolina State Bureau of Investi- [fol. 65] gation since October, 1957, until the present. Alamance County is within the district for which I am responsible as an Agent of the S.B.I. I had occasion to come to Alamance County sometime after July 31 to investigate a case involving Wayne Darnell Bumpers. I first came on Monday, August 1. On that day, I came to the Sheriff's office, and the Sheriff, Sheriff John Stockard, related to me what had happened during the night, that a boy and girl was parked on a Lovers' Lane, Monty Jones and Loretta Nelson, and they had been attacked by a colored male.

I did not talk with Mrs. Nelson and Mr. Jones that day. I eventually talked with Loretta Nelson about what had occurred. I was trying to think whether it was on the first Monday or second. I think I talked to her on August 2, Tuesday. Let me be correct. I did talk with her on Monday, August 1, in Alamance County Hospital, Room 404, in the afternoon, after lunch. She related to me at that time what happened to her in the evening before.

THE COURT: Members of the jury, the evidence being elicited from the witness S.B.I. Agent Minter, as to what the witness Loretta Nelson told him is not being offered as substantive evidence, but rather as corroborative evidence of the witness Loretta Nelson, if in fact you, the jury, find it does corroborate her, and for no other person. All right, proceed.

WITNESS (continuing): Loretta stated that on Sunday evening, July 31, her and Monty Jones were out riding around in the vicinity of Burlington City Lake in her 1965 Corvair. That they crossed the bridge at the City Lake and made a left-hand turn and went up the road a short ways to a side road and turned right on the side road, first pulling into a gate. She described it as a white gate. Then they backed out to the road and backed the car back to the gate. This was after dark. She said they had been sitting there about 10 or 15 minutes when a colored

[fol. 66] male walked up, tapped on the window. She said she asked him what did he want and he said to get out, and she refused. At that time, he flashed a rifle and ordered them to get out, again. So, she said she got out, her and Monty got out. They kept asking him what did he want, and he told her that he always did want a white girl. That they tried to beg off and get him to let them go. Finally she said she grabbed the rifle at one point and hollered for Monty to run and Monty come toward her and during the scuffle she got hit across the head with the rifle.

He later made Monty get back in the car and ordered her to strip and he laid her across the hood, which is in the rear of the Corvair where the motor is, and raped her while Monty was lying in the back seat. Then she put her clothes back on and he told her he wanted to ride up the road with them, and during this time she said they continued to beg him, told him she had to be at work at a certain time. So, they went on up the road approximately three miles, continued north out the Union Ridge Road, turned right on a dirt road, crossed a bridge and he told her to stop or turn here, and she went by a little wagon road that goes across a field, and he told her to back up and turn around, which she did. She backed up and turned around and headed the car back in the direction she came from.

That he got out and walked across approximately 100 yards, to a wooded area, at which time they stood there and continued to beg him and then he went back to the car and got a white dress she had in the back of her car and he went back and she tied Monty to a pine tree and blindfolded him and he was gagged. Then she was later tied up by the defendant with her belt and during this time, while she was tied to the tree, she was raped again, and then she was blindfolded and some time passed and then a little time passed. Then she heard a shot and she hollered for Monty and then later she was shot and [fol. 67] then she heard the car crank up and leave and she worked herself free and went over and untied Monty and he fell down on his knees and vomited. She got him

untied and they walked up the road to Tommy McPherson's home and summoned help.

She described to me the place the attack had taken place. At first she said after they crossed the bridge at City Lake, crossed the water; they turned left on to a paved road and went up this road for a short distance and then they turned right on to a dirt road, side road. Said it was a tobacco field and said they went down this road a short distance to a white gate. She said it was on a dirt road, off a dirt road, and in the pine trees where they were tied up. I later went to the place she described.

MR. COOPER: I would like to have this marked for identification as State's Exhibit No. 3.

WITNESS (continuing): The area where they were tied up was an open field for approximately a hundred yards, maybe less, and there was a small scrub pine. It wasn't tall pines and in this particular area there were only pines there, and just beyond that the hillside goes down into a hollow, which is a lot of oaks and other small trees. This road is a wagon road or a farm road, continues on by this spot on through a barbed wire fence into a pasture.

At the place she described, I observed some trees with some cloth material on it. The cloth was white, I would say, dress material, or cotton; one piece tied three or four feet above the ground. Some parts were laying on the ground, at the tree that Loretta was tied. The trees were approximately 15 feet apart where Monty was tied. There were some strands of thread from which cloth had been removed. Also, there were some signs at the bottom of the tree where someone vomited. The photograph you hand me, marked State's Exhibit No. 3, fairly and accurately describes the trees with the cloth tied to them [fol. 68] that I described. I did not find any glasses at the foot of either of the trees upon which the cloth was tied.

I had occasion to go to the home of Mrs. Hattie Leach later that week, on Tuesday, August 2. I went with Sheriff Stockard, Deputy George and Deputy Poe. I was wearing civilian clothes. As I recall, all of us were in

civilian clothes. I found a rifle at Mrs. Leath's house. I recognize the rifle, a .22-caliber, single-shot rifle, which has been marked for identification as State's Exhibit No. 2, which you hand me. This rifle was in the kitchen, back side of the house, sitting behind the kitchen door as you come in the front door, go to a hall and the kitchen. I took that rifle in my possession at that time. I took the rifle to Raleigh to our lab. I turned it over to Agent John Boyd. I later received it back from him and returned it to Sheriff Stockard. From the time I took possession of it at Mrs. Leath's house and until I gave it to John Boyd in Raleigh, and from the time I received it back from Agent John Boyd and turned it back to Sheriff Stockard, it was in my custody and under my control at all times.

MR. COOPER: I would like to have this marked for identification as State's Exhibit 4.

WITNESS (continuing): I recognize the manila envelope, marked for identification as State's Exhibit 4, which you hand me. That is a .22-caliber bullet that was taken out of Monty Jones. I received this from Dr. William Crutchfield, at Chapel Hill. After I received it from Dr. Crutchfield, I took it to Raleigh. I gave it to Agent John Boyd. I later got it back from him and returned it to Sheriff Stockard. From the time I received it from Dr. Crutchfield until I turned it over to Agent Boyd and from the time I received it back from Agent Boyd, until I returned it to Sheriff Stockard, it was in my custody and under my control at all times.

[fol. 69] MR. COOPER: I would like to have this marked for identification as State's Exhibit No. 5.

WITNESS (continuing): I recognize the manila envelope, marked as State's Exhibit No. 5, which you hand me. It is a .22 spent cartridge. This was found at the scene of the shooting. That is in the area where the cloth was tied on the trees. I took possession of it at that time. I took it to Raleigh and turned it over to Agent John Boyd. I later got it back and turned it over to Sheriff Stockard. From the time I took it in my possession at the scene until I turned it over to Mr. Boyd and from the time I received it back from Mr. Boyd and gave it to

Sheriff Stockard, it was in my custody and under my control at all times.

MR. COOPER: I would like to have this marked as State's Exhibit No. 6.

WITNESS (continuing): I recognize the manila envelope with card attached, marked for identification as State's Exhibit No. 6, which you hand me. It is a spent .22 cartridge, long. I received this from Sheriff Stockard. I took it to Raleigh and gave to to Agent John Boyd. I later received it back from Mr. Boyd and returned it to Sheriff Stockard. From the time I received it from Sheriff Stockard until I gave it to Mr. Boyd and, from the time I received it back from Mr. Boyd, until I returned it to the Sheriff, it was in my custody and control at all times.

When I talked to Loretta Nelson at Alamance County Hospital, I asked her to describe the pesron she claimed assaulted her that evening.

THE COURT: This is offered to corroborate Mrs. Nelson, if it does, this part about the description.

WITNESS (continuing): She said—

MR. SMITH: Objection. The witness appears to be reading.

THE COURT: He can refresh his recollection from his notes. Overruled. Did you make those notes?

[fol. 70] WITNESS: Yes, sir.

THE COURT: Overruled. You can refresh your recollection by looking at your notes.

WITNESS (continuing): She said at the time he was dark-skinned, long face, thick lips; he weighed about 145; he was dark, had black hair, kind of raised up a little, didn't stick too close to his head, and at the time he was wearing dungarees, white tennis shoes and a plaid shirt. At that time I showed Mrs. Nelson some photographs of colored males. The following day, Tuesday, August 2. She picked out a photograph and identified it as being the person who had assaulted her. She was shown twelve photographs. We had the pictures numbered from 1 to 12, and she picked out picture #5, which was Wayne Darnell Bumpers. At the time we went to Mrs. Hattie Leath's house and secured the rifle, which has been marked for

identification in this case, the defendant Wayne Bumpers was not under arrest.

I was subsequently present in the Alamance County jail when Mrs. Nelson and Mr. Jones were asked to observe a line-up in the Alamance County jail. We had ten colored males running in various ages, and each one was given a card numbered 1 to 10, and each individual staggered himself at different parts of the line. They were not numbered 1, 2, 3, that way. They were staggered and each victim was asked to come in and view the line-up. They went in separately. The first time they went in separately. After Mrs. Nelson and Mr. Jones had observed the people there in the jail, I believe they repeated a number to the Sheriff first, and later they repeated it to me. They both went in twice.

CROSS EXAMINATION

I am with the State Bureau of Investigation.

MR. COOPER: We have a doctor from Memorial [fol. 71] Hospital at Chapel Hill I had called, and I would like permission of the Court to put him on for just a few questions so that he can get back.

THE COURT: All right, the Court in its discretion will allow you to do so.

(Witness Minter is excused.)

DR. WILLIAM M. CRUTCHFIELD testified for the State as follows:

I live in Chapel Hill, N. C. I am a licensed physician by occupation. I received my training with reference to becoming a doctor at the University of North Carolina Medical School. I attended undergraduate school four years and four years of medical school. I am now at present in interne at North Carolina Memorial Hospital. I have been an interne in North Carolina Memorial

Hospital from July 31 to the present time. I had occasion during that time to treat Manson Marvin Jones. As I remember, Mr. Jones was admitted to the hospital early one Monday morning, about 2:00 o'clock, on August 1, and I saw him first in the intensive care unit at Memorial Hospital. At that time, Mr. Jones had allegedly been shot with a bullet of unknown character. Entrance wound was just at the right of the ziford (spelling?).

THE COURT: The what?

WITNESS: Ziford (?).

THE COURT: Wait a minute, Doctor. Instead of using medical terms, use terms those twelve jurors on the stand can understand.

WITNESS (continuing): This is commonly called the breastbone, the small bone you can feel at the bottom of the chest, the terminal end of it is called the ziform. I apologize for using the term. On examining Mr. Jones at that time, he had a very tender abdomen. His belly wall was quite tender. There was no bowel and quite hard and this meant he had some injury internally. He also had air that you could feel under the subcutaneous, that is the tissue right under the skin, the left side of the [fol. 72] chest wall. There was no exit wound of this missile. After treating his initial injury and evaluating him, treating him with intravenous fluids and supporting him, we decided that an operation to explore his abdomen was necessary and approximately two hours after he was admitted, he was taken to the operating room where he underwent exploratory laporotomy, that is exploring his abdomen.

Dr. Hartzog, our chief resident, I assisted Dr. Hartzog with this operation. The missle track indeed went through the anterior or front portion of the diaphragm, went through the left side of the liver, through the lower part of the stomach and lacerated or injured the spleen, an organ in the left side of the abdomen, and you could feel the bullet underneath the skin on the left side of the chest. We treated him appropriately by—the liver was not bleeding, so this area was drained to prevent infection. The holes in the stomach were sewed up, and the spleen had to be removed because it was bleeding. He

tolerated the procedure very well and was transferred back to the floor.

The bullet was not removed at this time for many reasons, one being the area had a lot of air in the skin. It was then a little more difficult to get it out at that time, and the bullet was causing him no trouble in the position it was in. We did not want to prolong his operation to remove the bullet at that time. We knew that as the air went down, we could get this bullet out with no trouble. Over the next five or six days we treated Mr. Jones with antibotics to prevent infection. He had to have some blood transfusions. I am sorry, I don't remember the exact number, and supported him over his injury. Six days after he was admitted to the hospital, he was doing quite well, and we decided at this time we could safely, the air had gone down somewhat under the skin and we could feel the bullet right under the skin. So in his room, with a [fol. 73] little bid of anesthetic known as xylocaine, which the dentists frequently use, we put this in the skin, made a very small incision, and the bullet popped right out. After I removed the bullet from his body, I wrapped it in a piece of sterile gauze, and I put it in an envelope that we have in the hospital and sealed the envelope with tape, gave it to a nurse and watched her lock it in the nartocits cabinet.

It happened to be on a Sunday this bullet was removed, and the next morning the bullet was taken to the administrative office and locked in the safe until an Agent from the SBI arrived to receive it. I was called when the Agent arrived and went down to identify the bullet in the envelope and gave it to the Agent from the S.B.I. I remember the Agent. I am sorry I forget his name, but the gentleman sitting there (indicating). This is Mr. Minter, the Agent to whom I gave the bullet. I can identify the envelope you hand me, marked for identification as State's Exhibit No. 4. This is the envelope I sealed the bullet in. It has my signature and the date and reads: "Missile removed from Manson Jones on 8/7/66," with my signature on it. This envelope contains that bullet.

MR. COOPER: I did not do it before, but I submit Dr. Crutchfield as an expert witness in the field of medicine.

THE COURT: All right, it is so held by the Court.

CROSS EXAMINATION

I can't say for shre whether this bullet struck any bone area; there were no fractures.

(WITNESS CRUTCHFIELD IS EXCUSED.)

J. N. MINTER, RECALLED FOR CROSS EXAMINATION:

I have been with the S.B.I. since October, 1957. Before that I was the Reidsville Police Department since [fol. 74] August of 1946. I talked with Mrs. Loretta Nelson Monday, August 1, the first time; talked to her on August 1, 2, and August 4, I believe. When I talked to her on August 1, she related what happened, how it happened and gave a physical description. I brought the photographs in on August 2. All of the photographs did not have persons' names written across the back of them. They might now, I don't know. Some of them did and some just had on the front where they are usually identified by number, where they will know which department taken the pictures. Some of the cards have names on them, as well as I remember. Some of them did have names on them.

The card of the defendant had a name on the back side. Looking at State's Exhibit No. 3, which I said previously was a picture of the scene where part of the action took place, looking at the pine trees in the background, I would say that that appears to be a fair portrayal of the way the forest was at that place, along this field, among the edge of the field, was pines all around it and on down the hill were oak trees, etc.

The two trees where there are some pieces of cloth appear to be back in the pine trees; they sit back a little, not too far, the first right on the edge. The other sits about 15 feet back. I would say these pine trees are 20 to 25 feet tall, just guessing. My investigation took me to the place where it was described earlier as being near the City Lake and a barrier, with a small dirt road. Yes, sir, in my testimony I have identified the .22 cartridge as having been found at that location. This picture that I just looked at portrays one place where I investigated. I investigated in another area a few miles from there, the scene that was where they were first parked at, this white gate described as an iron gate painted silver, if you continued down through this road, you go into City Lake. I have not identified any items of interest as having come from the first place they parked.

[fol. 75] After I got this bullet from Dr. Crutchfield, I took it to Raleigh and then turned it over to Agent Boyd, Ballistics. I came back in possession of it after that. Agent Boyd turned it over to me.

The line-up in the County jail was on August 16. It is true that when Mrs. Nelson first came into the line-up she looked toward the middle of the line-up and examined something in that area and walked out. She walked in and made a circle about halfway and right back out of the line-up. She had her head hung down. I couldn't pick out any particular spot she was looking at. When Mrs. Nelson first got back out of the line-up, the first time, she said she picked No. 6. I think she talked to Sheriff John Stockard first, and I later walked out and she did say 6. That wasn't the defendant's number. The first occasion the defendant's number was 7. The second time in the line-up the persons in the line-up were required to state their names, as a matter just for voice. On the second time they went in, after the persons in the line-up were required to state their names, the purported identification was indicated to me by Loretta Nelson and Monty Jones.

The first time Monty Jones came back and gave the right number to me and to Sheriff Stockard. The second time after they stated their names that Monty Jones and

Loretta Nelson identified them; on the second time Loretta Nelson identified No. 2, also Monty Jones identified him on the second occasion as No. 2. He had been rearranged in the line-up and given a different position. He had been required to state his name.

ONNIE LAUGHON testified for the State:

I am employed by the Alamance County Sheriff's Department. I had occasion to go to the scene of this crime in my official capacity as Deputy Sheriff on August 1, [fol. 76] this year. I can identify the envelope you hand me, with tag attached, marked for identification as State's Exhibit No. 6. It is a .22 cartridge. I found it over near the scene on the Sardin Mill Road, 60 feet from the tree that Mrs. Nelson told us she was tied to. I examined the tree to which Mrs. Nelson had been tied. I found pieces of a dress torn up; it was white, thick knitted dress-like. I found something at the base of the tree. I found a pair of glasses, ladies' glasses; little kind of funny-shaped glasses.

SOLICITOR: I would like to have this marked for identification as State's Exhibit No. 7.

WITNESS (continuing): The photograph you hand me, marked for identification as State's Exhibit 7, fairly and accurately represents the position of those glasse at the base of the tree as I saw them there on August 1. The glasses and the cartridge I found, I turned them over to Sheriff Stockard. I can identify the pair of glasses you hand me, marked as State's Exhibit 8; these are glasses similar to the ones I found beside the tree. From the time I took possession of the glasses and turned them over to Sheriff Stockard they were in my custody and control at all times. I also found three belts and a black scarf or net-like, something like a woman would put over her hair, or something of that nature, around the tree.

SOLICITOR: I would like to have these marked for identification as State's Exhibit 9.

WITNESS (continuing): I can identify State's Exhibit 9. These belts were around the tree that Mr. Jones was tied to. I brought those into the office and turned them over to Sheriff Stockard. I say around the tree, I don't mean tied around the tree, but they were around the base of the tree. I recognize the paper bag you hand me, marked as State's Exhibit No. 10. This is material that was used to tie the people to the tree. I found the [fol. 77] material around the two pine trees. The white cloth I just identified came from the trees, as represented in State's Exhibit No. 3, which you hand me. I turned that cloth over to Sheriff Stockard.

CROSS EXAMINATION

I found the shell case 66 feet from the tree Mrs. Nelson was tied to, between the tree and the Sardin Mill Road, where the car was parked, which would be east of the tree. No, I was not with the group from the Sheriff's Department that went to Mrs. Leath's house the week after the occurrence took place. I had nothing to do with any of the information released to the press. I am Onnie Laughon. I could have given some information to the BURLINGTON TIME NEWS published on the first of August, 1966, but I didn't give a full report. I mean by that, at that time we didn't know a whole lot about the case. I could have given some information on it. I don't deny it.

I don't deny giving the information to the press that the prosecuting witnesses "were found on an unpaved road off the old Stoney Cheek Church Road, north of Burlington," but we didn't see these people that night on the Sardin Mill Road. We didn't find them. I don't deny giving the same newspaper a quotation at the same time saying that, "they said," by that I meant Monty Jones and Loretta Nelson, "they said they were parked on the road and attacked by a Negro man." I could possibly have said such a thing. I deny having given a report to the ALAMANCE NEWS, published in Graham on the 4th of August, 1966, "Bumpers is accused of accosting the Burlington young people Sunday night as they were parked

on the shoulder of a rural road, in Caswell County, near the Caswell County line." I do not know when the name of this defendant was first released by the Sheriff's Department and printed as being the Sheriff's Department's prime suspect in this case. I did not have anything to do with getting up photographs taken to the hospital for [fol. 78] the prosecuting witness to examine.

JOHN H. STOCKARD testified for the State:

I am employed by Alamance County as Sheriff. I am the duly elected, qualified and acting Sheriff of Alamance County and was so on July 31, 1966. I can identify the envelope you hand me, marked State's Exhibit No. 6. It is a .22 cartridge that has been fired. I received it from Mr. Laughon. I put it in my safe and then turned it over to Mr. Minter with the S.B.I. Subsequently, I received it back from Mr. Minter. From the time I received it from Mr. Laughon, until I gave it to Mr. Minter, and from the time I received it back from Mr. Minter, until today, it has been in my custody and under my control at all times. The rifle you hand me, marked State's Exhibit 2, was in my possession. This was taken from the residence of Mrs. Leath, taken to the SBI in Raleigh and returned to me by Agent Minter. From the time I received it from Agent Minter, until today, it has been in my custody and under my control at all times.

The envelope you hand me, marked for identification as State's Exhibit 5, has been in my possession. This was taken at the scene, given to Mr. Minter who, in turn, took it to Raleigh, who in turn brought it back and gave it to me. From the time I received it back from Mr. Minter, it has been in my custody and control at all times. The envelope you hand me, marked for identification as State's Exhibit No. 5, has been in my possession. I received this from Mr. Minter when he returned it from the the State Bureau of Investigation. Since receiving it, it has been in my custody and under my control at all times.

The glasses you hand me, marked for identification as State's Exhibit 8, were received by me from Mr. Laughon,

which, in turn, I took them to the hospital and gave them [fol. 79] to Mrs. Nelson. There is no difference between these glasses marked for identification as State's Exhibit 8 and the ones I received from Mr. Laughon.. The belts you hand me, marked State's Exhibit 9, have been in my possession. I received them from Mr. Laughon, and they have been in my possession ever since. The sack of cloth you hand me, marked for identification as State's Exhibit 10, has been in my possession. I received them also from Mr. Laughton, and they have been in my possession since.

CROSS EXAMINATION

To the best of my knowledge, the Sheriff's Department first released the name of the defendant as being the State's prime suspect on August 4, the day after he was arrested. To the best of my knowledge it was actually printed in the newspaper on that date.

THE COURT: It was released as the prime suspect, is that what you said?

WITNESS: It was released that he had been arrested and charged.

It could have been printed in the BURLINGTON DAILY TIME NEWS on August 3 that the defendant was a suspect; I am not sure, but I know it was not released until he was arrested. I believe he was arrested on the morning of the 3rd. Mr. Minter and I were the ones who got together the collection of photographs that were shown to Monty Jones and Loretta Nelson. We tried to take them as near the description she gave us, plus the fact that they were men from that area. Actually, some of them were quite different in description from that description. I believe I did see the defendant Wayne Darnell Bumpers in the courthouse here Tuesday morning before he was arrested. In fact, he was on his way up to do some business in the courthouse. I was not planning to arrest him at that time. I had not determined at that time that he was the man I was looking for. I did not arrest him on the second; he was arrested on the third.

[fol. 80] JOHN BOYD testified for the State as follows:

I live in Raleigh. I am employed by the State Bureau of Investigation, Special Agent in charge of the Firearms section of the Crime Laboratory. I have been employed by the State Bureau of Investigation going on 15 years. I have a specialty in the field of criminal investigation on which I work, firearms identification and ballistics work. I have received specialized technical training at the manufacturing plants, Smith & Wesson, Colt, Remington, Winchester, DuPont Powder Plant, and H. P. White Ballistics Laboratory, and have been gainfully employed in this work going on 15 years. I have occasions during my experience with the S.B.I. to make comparisons of cartridge cases, bullets and firearms, to determine whether or not a certain firearm shot a particular shell or bullet. I have made this type of comparison thousands of times.

MR. COOPER: I submit the witness is an expert in the field of firearms identifications and ballistics.

THE COURT: The Court holds that S.B.I. Agent John Boyd, in charge of the Firearms section of the S.B.I., in Raleigh, North Carolina, is an expert in the field of firearms identification and ballistics.

WITNESS (continuing): I can identify the rifle you hand me, marked for identification as State's Exhibit No. 2. This is a .22-caliber, single-shot Remington rifle. I received this from Alamance County Deputies Oakley and Laughon. I made the identifications or performed a test on that rifle. I can identify the envelope, with tag attached, marked for identification as State's Exhibit No. 6, which you hand me. This is a fired .22-caliber cartridge case. I had occasion to make a test on that cartridge case. I also received this from Deputies Oakley and Laughon. I can identify the envelope you hand me, marked for identification as State's Exhibit 5. This is also a fired [fol. 81] .22-caliber cartridge case. I had occasion to perform a test on that. I can identify the manila envelope you hand me, marked for identification as State's Exhibit 4: This is a .22-caliber spent bullet. I had occasion to perform an examination on that. I had occasion to examine the rifle, State's Exhibit No. 2; the two cartridge

cases which are State's Exhibits 5 and 6, and the bullet which is State's Exhibit 4, to determine if those cartridge cases and that bullet were fired by that rifle. My test showed that this rifle, State's Exhibit No. 2, fired both of these cartridge cases, State's Exhibits 4 and 5, and also fired this bullet, State's Exhibit 6.

THE COURT: Let me see. State's Exhibit 4 is the .22-caliber spent bullet, is that right?

WITNESS: Yes, sir, I'm sorry, sir. My test showed that State's Exhibit 2, the rifle, fired this spent bullet, State's Exhibit 4, and these two cartridge cases, State's Exhibits 5 and 6.

WITNESS (continuing): After making these tests, I returned State's Exhibits 2, 4, 5 and 6 to our Special Agent J. N. Minter. From the time I received them until I turned them over to Mr. Minter, they were in my custody and under my control at all times.

CROSS EXAMINATION

I have no idea how old that rfle is. As an expert in ballistics, I could have some notion what age that gun is. I could do this by test purposes, but I can't do it here on the witness stand. I did not make any effort to determine the age when I performed the tests in Raleigh; no examination of this type was conducted. No, it is not quite obvious it is an old rifle. It does appear to me to be quite rusty. It does not appear to me to be worn, particularly around the working surfaces in the chamber and various places, not to any great degree. I did not disassemble the gun when I had it. I made no effort to take [fol. 82] it apart. I fired some test bullets through the gun, into absorbent cotton. I fired three test bullets. I did not take any pictures comparing the test bullets to the bullets on exhibit here. No, sir; it is not ordinarily considered to be good practice in preparing for a courtroom presentation to take pictures of the test bullets and compare them with bullets in evidence.

In examining the test bullet as against the bullet which is one of the exhibits, I used a Standard Laboratory Compound Microscope, with an Optical Bridge, allowing

the viewer through one eye-piece to examine two objects in position to each other for comparison purposes. Through a microscope, you can only see the bullet from one position. I look at the other positions after I looked at it once. I examined the bullets and the cartridge cases on their entire surface, the bullet on each rifling, from one end to the other and the entire surface of the projectile itself.

I cannot answer the question, the science of ballistics is not truly an exact science. I have not made a mistake to my knowledge. Well, now, sir, yes, sir, there could be mistakes I wouldn't know of; we are dealing in the realm of possibility or probability? In the realm of probability, it is very unlikely, because of the law of probability, that was not calculated by me, but has been calculated for publication, says that for the same weapon to fire two bullets that would be different or for two different weapons to fire bullets that are the same would incorporate all the weapons that have ever been manufactured from the beginning of firearms to now, and on the present rate of manufacture, all the weapons that will be manufactured for the next twenty-some years. To be different or the two bullets from different rifles to be the same, the same law of probability. When guns are damaged or worn or decomposed in any manner, this tends to make it much more identifiable from wear, rust, corrosion; much more positively identifies a weapon with a bullet or [fol. 83] cartridge case. No, sir, if it had so many obscuring marks, it does not end up almost entirely void, almost completely of characteristics; I have never known of such a situation; it always improves the situation rather than deteriorates it; it makes it better. I can't answer the question, if I believe there is a point beyond which it deteriorates that would hinder my determination, because this tends to improve it rather than deteriorate it. You may look at the bullet. This bullet would not go back inside that rifle unless you put it there. It would fit in there. No, sir, it is definitely not true that a bullet gets so it is standard after having been fired so that one can get it back in the barrel again. I did not put it back in the barrel.

In my opinion, this bullet is not quite badly scarred on one side, with reference to the term "badly scarred," no, sir. It has some damage on one side; it is not an extensive damage, no, sir. Part of it is not missing, in my opinion. I do not know what all these scratch marks on it are.

I can't answer the question, did they aid my investigation, unless you specify to me, sir, what you are talking about. On one side of the bullet a bunch of scratch marks, yes, sir. It shows through a different color, a bright color where all the scratch marks are. This didn't aid my investigation. No, sir, it did not hinder it in any way, because this part of the bullet does not come in contact with the barrel. I didn't say there is a whole side that doesn't come in contact with the barrel. That is not damaged on the side; that is damage on the nose of the bullet, and the nose of the bullet does not touch the barrel as it passes down the barrel. No, sir, I said the sides; the bottom end does not come in contact. In the case of this type ammunition, the lower third of this bullet is all that comes in contact with the barrel, and the [fol. 84] surface used for identification purposes has very little damage to it; the nose has some damage. I used the same method in identifying the cartridge cases. I put them under a microscope. I did not go out and get new cartridges and introduce them into the gun and fire them. I used cartridges that I already had in my ammunition supply, new. I fired them, took them out and compared them. Breech face, firing pen, ejector and extracting marks are the kind of marks I compared on them.

No, sir, I did not necessarily find that all these places was just some surface that had come in contact with the shell and knocked against it. If you will, sir, some of the markings that I compared had nothing to do with pressure. Ejector and extractor are not pressure marks; they are scrape marks, one piece of metal against another, one being harder marks the softer metal. The ejector and extractor of this particular weapon are so designed that it will mark the soft copper of the cartridge case rather than damage the ejector and extractor. It has nothing to do with pressure marks.

The firing pin is a pressure mark, yes, sir. Breech face is a pressure mark caused with the cartridge case explodes in the chamber the same amount of pressure that pushes the bullet out of the barrel, pushes the cartridge case back against the breach case or bolt, the breech face or bolt being a hard piece of metal and, rather than damage it, it damages the soft cartridge case and marks it. I did not put the shells that have been introduced as exhibits back in the rifle at any time while I was testing them. The only marks I can work with, sir, are the lands and groove marks imparted to the soft lead bullets by the steel barrel. I examined both the lands and groove marks. Basically, sir, I am familiar with the work of Paul L. Kerr, textbook which deals extensively with ballistics. I consider him an authority in some fields, not necessarily ballistics. [fol. 85] I am familiar with the volume known as "Modern Criminal Investigation," Harry Soddoman, John H. O'Connor. I consider that an authority on police arms. I did not find the lands of this gun were worn badly. No, sir, no part of the bullet offered as an exhibit which was supposed to be there was missing; the entire bullet is here.

DR. ALLEN D. TATE, JR. testified for the State:

I live in Graham. I am licensed to practice medicine in this State, for eighteen years. I am not licensed to practice in any other State. I received my medical training at University of North Carolina Medical School and University of Maryland Medical School. I am a general practitioner. I am not licensed by any other State Board or Commissions or Colleges or anything like that.

COURT: The Court holds he is a medical expert in the general practice of medicine.

WITNESS (continuing): I had ocassion to examine Loretta Nelson on the evening of July 31, this year. I made a pelvic examination. This is an examination of the female organs externally. I made this examination to determine whether or not there was sperm present. The

examination of the slide made under microscope did show the presence of sperm. I was not able to tell how long it had been there. I examined Mrs. Nelson's forehead. She had a contusion and also a laceration of her forehead, about the hairline, just to the left center. It was bleeding slightly. A contusion is a bruise and a laceration is a cut. I had to take three stitches in it. Based upon my examination of Mrs. Nelson, I would say that she had engaged in sexual intercourse within the past 24 hours prior to the time I saw her.

[fol. 86] MRS. LORETTA NELSON (RECALLED) testified on REDIRECT EXAMINATION:

I lost my eyeglasses during the events to which I have testified. I lost them when I was blindfolded; he took them off and put them in my hand. When I got loose, I dropped my glasses and forgot about them. I subsequently got them back. Sheriff Stockard brought them to me when I was in the hospital. They are the glasses I am wearing now, marked for identification as State's Exhibit No. 8. I can identify these belts which are marked for identification as State's Exhibit 7, which you hand me. These two belong to me. The gold belt and the brown leather belt belong to me. And this is Monty's, the dark leather belt. This one (indicating) I used to tie Monty, the gold; and this was used to tie me. The gold one and the brown leather one were used to tie Monty to the tree. The dark leather was used to tie me to the tree.

I can identify the bag of white cloth, marked for identification as State's Exhibit 10, which you hand me. This is the white dress I wore to church. It was laying on the back seat of my car. During the events, he tore it up and used it to gag us. Wayne tore it up. The defendant. I saw him do it. I do not know how many pieces he tore it into; there were several. He gagged and blindfolded us with it. When we got loose, that cloth was still on the tree to which we were tied. We didn't make any attempt to take it off the tree.

RECROSS EXAMINATION of Loretta Nelson:

I don't remember if, after the first line-up, Monty Jones also called out No. 6 after we got out. I called No. 6. I don't remember what he called out.

ONNIE LAUGHON (RECALLED) REDIRECT EXAMINATION:

I had occasion to take State's Exhibit 2, 4, 5 and 6, the [fol. 87] rifle, the bullets and two cartridge cases, to Raleigh to Agent John Boyd of the State Bureau of Investigation. Sheriff Stockard asked me to take them. I received them from Sheriff Stockard and turned them over to Agent Boyd.

RECROSS EXAMINATION of Onnie Laughon:

I told you earlier that one of the cartridges came from 66 feet away from the tree. I don't know where the other one came from; I wasn't there when it was found. I first saw the other one at the office.

SHERIFF JOHN H. STOCKARD (RECALLED):

REDIRECT EXAMINATION:

I was present when the cartridge marked for identification as State's Exhibit 5 was found. It was found almost highway between the two trees, off to the right a little ways, the two trees the victims were tied to. I had occasion to go to Mrs. Hattie Leath's house, and I had occasion to go to the spot where I found the cloth on the two trees. The distance between the two places is approximately two and a half or three miles. This is a road between the place and the home of Mrs. Hattie Leath. I did not examine Mrs. Loretta Nelson's automobile for finger-

prints; I had it done. It was done partially in my presence, under my direction. There were some fingerprints found in the car. I do not know whose they were. The defendant's fingerprints were not found in the car.

RECROSS EXAMINATION of Sheriff Stockard:

To get from the home of Mrs. Leath to the place where the two trees are, well, there is a dirt road leading from Mount Vernon Church Road, I believe it is, into the Leath residence, which, I would say, is approximately a half or three-quarters of a mile, I am not sure. After you hit the paved road, you turn to the right and go approximately two miles, I would say a mile and a half, until you come to an intersection, you bear to your right, and there is [fol. 88] an unpaved road, I believe it is known as the Sartin Road, and up that road, maybe, three-quarters of a mile, a half or three-quarters. The cartridge case I spoke of is a different one from the one Mr. Laughon said was 66 feet from the tree. I did not pick up any cartridge cases when we were at the home of Mrs. Hattie Leath. We looked, but didn't find any.

REDIRECT EXAMINATION of Sheriff Stockard:

I went to the place of Mr. Jones and Mrs. Nelson first saw the person that assaulted them, the place where the bar is across the road. By the road, I would say that that is approximately one mile; through the woods, I would say maybe half a mile.

MR. COOPER: I would like at this time to introduce State's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 into evidence.

THE COURT: Allowed.

MR. COOPER: I request permission to show 1 and 1A to the jury.

THE COURT: Granted.

MR. COOPER: I would like to show Exhibits 3 and 7 to the jury.

THE COURT: Granted.

THE STATE RESTS.

MR. SMITH: Defendant makes a motion for judgment of nonsuit.

THE COURT: Denied. Exception.

EXCEPTION #19.

MR. SMITH: The defendant doesn't wish to offer any evidence.

MR. SMITH: The defendant moves for judgment as of nonsuit.

THE COURT: Denied. Exception.

EXCEPTION #20.

MR. COOPER: I would like to ask counsel for the defendant if he objects to the Sheriff keeping the exhibits [fol. 89] in the safe tonight?

MR. SMITH: No objection.

THE COURT: Let the record so show.

ARGUMENT TO JURY BEGINS

THE COURT: The defendant objected to the State implying that the defendant did not testify or go upon the stand or present evidence. The Court will instruct the jury as to that phase of the law, and the Court does not recall any reference that the Solicitor made to the defendant's failure to testify, and the Court was present, sitting on the Bench during the entire argument of the Solicitor.

MR. SMITH: Objection.

THE COURT: Overruled. Exception.

EXCEPTION #21.

MR. SMITH: Motion for a mistrial.

THE COURT: Denied. Exception.

EXCEPTION #22.

JURY RETURNS TO COURTROOM.

* * * *

[fol. 116]

STIPULATION OF COUNSEL

IT IS STIPULATED AND AGREED by and between the Solicitor and Counsel for the Defendant that:

1. The composition of the jury, as to race and sex, reduced to categories of the various types of challenges and excuses and of the category of seating on the jury, is as follows:

	White male	White female	Negro male	Total
Challenged for cause as opposed to capital punishment	8	5	3	16
Challenged for cause because of criminal record	0	0	1	1
Challenged for cause as prejudiced against defendant	2	0	0	2
Excused by Court because illiterate	1	0	0	1
Excused by Court because a resident of township where crime allegedly occurred	1	0	0	1
[fol. 117]				
Peremptorily challenged by Solicitor	0	0	2	2
Peremptorily challenged by Defendant	13	3	0	16
Seated on the jury	14	0	0	14
Totals	39	8	6	53

2. The Solicitor, Thomas D. Cooper, during his address to the jury, said substantially the following:

> The State has tried to bring in all the evidence. If there are some questions you want answered, it is not the State's fault that they have not been answered.

THOMAS D. COOPER, Solicitor;

SMITH, MOORE, SMITH, SCHELL & HUNTER
By: Norman B. Smith
Attorneys for Defendant.
SMITH, MOORE, SMITH, SCHELL & HUNTER

* * * *

[fol. 120]

IN THE SUPREME COURT OF NORTH CAROLINA

AFFIDAVIT

For the Defendant

FAYE GOLDBERG, being first duly sworn according to law, deposes and says:

1.

Her name is FAYE GOLDBERG. She lives at 317 Hertford Circle, Decatur, Georgia.

2.

The affiant is an Assistant Professor of Psychology at Morehouse College, 233 Chestnut Street, Southwest, Atlanta, Georgia. She holds a Ed.D. Degree in Human Development from Harvard University. She teaches courses in Development Applied and Abnormal Psychology and Research Methods.

3.

The affiant received an undergraduate degree in Psychology from Temple University and a master's degree from Boston University. (See attached sheet for more complete educational background and related matters including specifications).

4.

Recently, the affiant has completed a long-range study for the purpose of determining what relationship, if any, there is between the willingness of a prospective juror to vote for the death penalty in a capital case, and the predisposition or inclination of that juror to convict rather than acquit the defendant. The methods used in this [fol. 121] study, and the results obtained from the study, are summarized in Exhibit "1", which is attached hereto and made a part hereof, and the contents of which the affiant subscribes to as a part of this affidavit.

5.

In the course of her investigation described in the preceding paragraph, the affiant had occasion to correspond with Dr. Cody Wilson, who taught and researched in the field of Social Psychology at the University of Texas. Dr. Wilson was working on an investigation on the same subject prior to the time the affiant was conducting the above described investigation. Through correspondence with Dr. Wilson, the affiant became familiar with the methods of Dr. Wilson's work, and with the product of his investigation. A copy of the report of his study, describing the methods used and the results established, are incorporated in Exhibit "2" which is attached hereto and made a part hereof, and to the best of the affiant's information and belief, the contents of the said Exhibit "2" are true and complete.

I, Janet Eberstein, a Notary Public of the County of Fulton, and the State of Georgia, do hereby certify that FAYE GOLDBERG, the affiant in the above affidavit, appeared before me this 4th day of May, 1967, and swore to and subscribed the contents of the said affidavit.

/s/ Janet Eberstein
Notary Public

/s/ Faye Goldberg
FAYE GOLDBERG

Notary Public, Georgia, State at Large
My Commission Expires April 13, 1971

[122] ATTACHMENT

EDUCATIONAL BACKGROUND:

AB Psychology Temple University
AM Psychology Boston University
EdD Human Development Harvard University

VOCATIONAL HISTORY:

Assistant Professor of Psychology, Morehouse College
Instructor in Psychiatry, Emory University
Social Science Analyst, National Institutes of Mental Health
Clinical Psychologist, Mass. Mental Health Center
Research Assistant, Harvard University

PROFESSIONAL SOCIETIES:

American Psychological Association
Southeastern Psychological Association
Georgia Psychological Association
Society for the Psychological Study of Social Issues
Society for Research in Child Development

PUBLICATIONS:

Cowan, G. and Goldberg, F. J. Need Achievement as a Function of the Race and Sex of Figures of Selected TAT Cards. Journal of Personality and Social Psychology, 1967, Vol. 5, No. 2, pp. 245-249

[fol. 123]

EXHIBIT "I" TO AFFIDAVIT

ATTITUDE TOWARD THE DEATH PENALTY AND PERFORMANCE AS A JUROR

Dr. Faye Goldberg, Assistant Professor of Psychology
Morehouse College, Atlanta, Ga.

PURPOSE: To determine if persons without conscientious scruples against the death penalty behave differently as jurors from those who do have such scruples. To determine, in addition, if there are race and sex differences in such attitudes.

METHOD: One hundred Negro and 100 white college students were given a questionnaire in which 16 cases were described ranging in severity of the crime committed. All were cases in which the death penalty could have been given. Accompanying the description of the cases was a questionnaire in which the subjects were asked to record their judgments as to guilt or innocence, ranging from guilty of first degree murder to not guilty by reason of insanity. If guilty, the subjects were asked to impose an appropriate sentence which could be death, probation or any intermediate sentence. The instructions to the subjects were as follows:

> Assume you are a member of a jury with the duty to decide the guilt or innocence of the defendant and the sentence in each case based on the summary of the evidence presented. You are to assume that the penalty you select will be inflicted, that is, make no allowance for any modifications such as executive clemency, parole, or pardon. Record your decisions on the accompanying chart.

Following the case summary the subjects were asked to answer Yes or No to the following question: Do you have conscientious scruples against the use of the death penalty?

[fol. 124] RESULTS: 1. People who say they do not have conscientious scruples against the use of the death penalty are:

a. More likely to convict

b. More likely to convict for a more serious crime than for a lesser crime

c. More likely to reject the plea of not guilty by reason of insanity

d. More likely to impose a more severe sentence when they do convict

These subjects are compared with those who say they do have conscientious scruples against the death penalty.

2. Sixty-one percent of the present sample answered that they did have conscientious scruples against the death penalty. Of those who answered the question in the affirmative, 42% contradicted this verbal statement by imposing one or more death sentences in the simulated cases. Of these "contradictory" cases 90% were Negro. This suggests either that the question was misunderstood or that there is a marked disparity between theoretical attitudes and actual behavior. In general there was a marked racial difference in attitudes toward capital punishment; 76% of the Negro subjects said they had conscientious scruples against the death penalty as opposed to 47% of the white subjects.

3. Slightly more women than men opposed the death penalty.

[fol. 125]

EXHIBIT "II" TO AFFIDAVIT

IMPARTIAL JURIES?

Cody Wilson

The Texas Observer, Nov. 17, 1964

Austin

Texas is one of several states that provide for "death qualification" of juries that hear and render decisions in "capital" cases. That is, in order to serve on a Texas jury that hears a case concerned with rape, murder, kidnapping, or armed robbery, a person must believe in capital punishment.

Professor Walter Oberer, formerly of the University of Texas law school, raised the question, in an article in the Nation last spring, whether such practices constitute a denial of fair trial to the defendant on the issue of guilt. He drew two conclusions, that the question had never been squarely presented to any court, and that due process is not a static concept, so that when the issue is presented, the testimony of expert witnesses from psychology may be relevant.

The question Oberer raises is a legal one and can be answered only by the courts. But behind the legal question lies a psychological one: Do people who believe in capital punishment differ from people who have scruples against capital punishment in other psychological characteristics so that a jury composed only of people who believe in capital punishment would be biased against the defendant?

In an effort to answer this question, and thereby perhaps to help the courts answer theirs, a research team of lawyers and psychologists at the University of Texas has gathered information from more than 200 adults, mostly junior and senior college students. Five capital cases were simulated; brief written descriptions were prepared of the facts presented to the jury in each case. Each person was asked to assume, in each of the five cases, that he was a member of the jury and to reach a decision of guilt or innocence. He was asked to indicate the degree of con-

fidence that he had in each of his decisions. He was asked the question the answer to which forms the basis of a "challenge for cause" in a capital case, "Do you have conscientious scruples against the death penalty, or capital punishment for a crime?"

Each person was also asked to agree or disagree with a series of statements, of which these are examples:

"The district attorney's interpretation of the facts in a criminal case is usually more reliable than the defense lawyer's."

"If two witnesses gave conflicting testimony in a criminal case, I would probably believe the witness for the prosecution rather than the witness for the defense."

"If I were a member of a jury, I could never vote 'not guilty' for a man whose defense was insanity."

"The plea of 'not guilty by reason of insanity' is a loophole that allows many criminals to escape punishment."

The number of statements similar to the first two that the subject agreed with was used as a measure of the tendency to be biased in favor of the prosecution. The number of statements similar to the latter two that the subject agreed with was used as a measure of the tendency to be biased against insanity as a defense plea.

Finally, each person was asked to assume the jury had agreed upon a verdict of guilty in each of the simulated cases. Now he was asked to recommend an appropriate punishment. The allowable punishments ranged from suspended sentence to life imprisonment but did not include the death penalty.

The research showed that people who believe in capital punishment differ from those who have scruples against capital punishment in several characteristics related to jury performance:

(1) People who believe in capital punishment are more likely to judge guilty in response to the cases than are people who do not believe in capital punishment;

(2) People who believe in capital punishment are more confident of the correctness of their judgments of guilt and innocence;

(3) People who believe in capital punishment are likely to assess a more severe punishment—even without the death penalty—than are people who have scruples against capital punishment.

(4) People who believe in capital punishment are more likely to be biased in favor of the prosecution and against the defendant;

and (5) People who believe in capital punishment are more likely to be biased against insanity as a defense than are people who have scruples against capital punishment.

If we assume that the observed relationships hold among the adult population at large (and there is no reason for thinking that they would not), then we may conclude that a jury selected by systematically excluding people who have scruples against capital punishment is biased in the direction of being more likely to bring a verdict of guilty, being more confident of this decision of guilty, favoring the prosecution in opposition to the defense, being hostile toward the plea of not guilty by reason of insanity, and assessing a more severe punishment when the death penalty has been excluded from consideration.

If the existence in juries of such systematic biases against the defendant constitutes denial of fair trial, then we are violating one of our most cherished legal traditions with our current jury selection procedures in Texas. The person accused of a capital crime is not getting a fair shake to which we are all entitled.

Dr. Cody Wilson, a social psychologist, is associate professor of educational psychology at the University of Texas.

[fol. 126]

IN THE SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA

v.

WAYNE DARNELL BUMPERS

OPINION—June 20, 1967

* * * *

[fol. 127] APPEAL by defendant from *Hobgood, J.*, 24 October 1966 Criminal Session, ALAMANCE Superior Court.

The defendant Wayne Darnell Bumpers was charged in a bill of indictment with the rape of one Loretta Briggs Nelson on 31 July 1966. In another bill he was charged with a felonious assault upon her with a .22 caliber rifle, and in a third bill with a felonious assault upon Monty Jones. The three cases were consolidated for trial and were tried at the October 1966 Criminal Session.

The State offered evidence through the testimony of Loretta Nelson, twenty-one years of age, and who is separated from her husband, which is summarized herein. She said that on the night of 31 July 1966, she went for a ride in her 1965 Corvair with Monty Jones, whom she had been dating for some time. They parked on a secluded road and had been there for about ten minutes when the defendant Wayne Bumpers came up to the car and tapped on the window. She rolled the window down about two inches, and he asked her to open the door. Upon her refusal, he put a rifle in the window and told her to get out of the car. When she did, he demanded her favors, which she refused. Bumpers then pointed the gun at Monty Jones, and said "Are you going to give it to me?" She then consented, and he said, "Well, strip." She took her clothes off, laid on the back of the car, and the defendant raped her. He had made Monty get in the back seat and kept the rifle in his [fol. 128] hand pointed toward Monty's head. The defendant hit Loretta in the head with a gun, causing it to bleed. She testified that he had intercourse with her. She put her clothes back on, and the defendant then made the

couple walk down the road. He followed about fifteen feet behind them with his gun. He ordered them to get in the car, with Loretta in the driver's seat, the defendant sitting beside her, and Monty on the back seat. He held a gun on Monty and told Loretta that if she tried to run off the road he would shoot Monty. They came to a little road, and the defendant made them stop the car, get out, and walk down to some bushes. He made them lie down on the ground and told them to stick their hands up in the air. Loretta begged him to let them go, to which Bumpers replied, "I can't do it; you will go to the cops." He said he was going to kill them. Monty then told Bumpers to tie them to a tree, that he didn't have to kill them. At Monty's suggestion, the defendant made Loretta tie Monty to a tree with her belt with his hands behind him, blindfolding and gagging him. The defendant then tied Loretta to a tree, after which he raped her again, having taken off her shorts and pants. After this, the defendant asked Monty where his heart was and then stepped back and shot him. He reloaded the gun and shot Loretta through the left breast, the bullet going all the way through her. The defendant left in Loretta's car. She got her hands free and untied Monty. They walked up the road to a farm house (McPherson's), called for help and told Mr. McPherson that a negro boy had shot them. McPherson called the Sheriff's Department and an ambulance, which took them to Alamance County Hospital.

Loretta said that from the time they first saw the defendant until they got loose was about an hour and a half. "During that time I had an opportunity to hear him talk. I got an opportunity to look at his face, when he opened the car door. The light in the car come on. It was a full moon out there that night otherwise; we could see pretty clear." She identified the defendant as her assailant, said she had never seen him before July 31, but "I know I saw him on July 31. In my own mind I am certain, and nothing could really dissuade me from it."

The testimony of Loretta's companion, Monty Jones, was similar to hers in that he described the events just as she did. He said, also, that he was shot in the middle of the chest, and the bullet lodged in his back. It was taken out three days later. Monty was taken to Alamance Hos-

pital and later transferred to Memorial Hospital in Chapel Hill where he stayed for two weeks. He testified that the doctor sewed up both sides of his stomach, took out his spleen and did something to his lip. He said "I saw the [fol. 129] man who assaulted me on July 31 in the courtroom. (Witness indicates the defendant.) I am indicating the defendant Wayne Darnell Bumpers . . . . I seen my attacker in the car. I knew what he looked like. I seen him in the car. I only knew what he looked like."

The State offered evidence to corroborate the testimony of these two witnesses relating to what they had told them and also as to the identification of the defendant as the assailant.

Dr. William M. Crutchfield testified that he was an intern at Memorial Hospital in Chapel Hill, that he treated Monty Jones and described the latter's injury, that Dr. Hartzog performed an exploratory operation with Dr. Crutchfield assisting. He said "The missile track indeed went through the anterior or front portion of the diaphragm, went through the left side of the liver, through the lower part of the stomach and lacerated or injured the spleen . . . and you could feel the bullet underneath the skin on the left side of the chest . . . the spleen had to be removed because it was bleeding . . . the bullet was not removed at this time for many reasons, one being the area had a lot of air in the skin . . . Six days after he was admitted to the hospital, . . . we put this (anesthetic) in the skin, made a very small incision, and the bullet popped right out." He testified that the next day he gave the bullet to Mr. Minter, agent of the S.B.I.

J. M. Minter testified that he is a member of the State Bureau of Investigation, that he went to the place which was described as the scene in question where he found a .22 cartridge. He also saw some dress material, or cotton, one piece tied three or four feet above the ground with some parts lying on the ground and some strands of thread from which cloth had been removed. He testified that on August 2 he went to the home of Mrs. Hattie Leath, grandmother of the defendant who lived with her, where he found a .22 caliber, single-shot rifle which was taken to the S.B.I. laboratory in Raleigh and turned over to Agent John Boyd. He identified a .22 caliber bullet

that he received from Dr. William Crutchfield at Chapel Hill, and it was also taken to the S.B.I. laboratory in Raleigh and given to Agent John Boyd who further identified a .22 spent cartridge which was found at the scene of the shooting in the area where the cloth was tied on the tree. This was also taken to Raleigh and turned over to Agent John Boyd.

John Boyd testified that he has been employed with the State Bureau of Investigation for fifteen years and is the Special Agent in charge of the Firearms Section of the Crime Laboratory. His specialty is firearms identification and ballistics work. The Court held that he was an expert in that field. He identified the cartridge case and [fol. 130] the two bullets received from Mr. Minter as having been fired from the rifle which had previously been identified as being the one found in the home of Mrs. Hattie Leath.

Dr. Allen D. Tate, Jr., whom the Court held to be a medical expert, testified that he made a pelvic examination of Loretta Nelson on the evening of July 31, made a slide, which showed the presence of sperm. He said he was not able to tell how long it had been there but gave it as his opinion that she had engaged in sexual intercourse within the past twenty-four hours prior to the time he saw her. He said she had a contusion and a laceration of her forehead, which was bleeding slightly and required three stitches.

The defendant moved for judgment as of nonsuit at the close of the plaintiff's evidence, which was denied. The defendant offered no evidence and again moved for judgment of nonsuit, which was denied.

The jury returned verdicts of guilty as charged in the bills of indictment (for felonious assault) and a verdict of guilty of rape with the recommendation of life imprisonment. The Court thereupon pronounced sentences of ten years imprisonment, to run consecutively, in each of the felonious assault cases, and that he "be imprisoned in the State Prison for the remainder of his natural life, to be assigned to work as by law provided," which was to begin at the expiration of the two ten-year sentences in the felonious assault cases.

From the judgments, the defendant appealed.

Smith, Moore, Smith, Schell & Hunter by Norman B. Smith, Attorneys for the defendant. Of Counsel: Lee, High, Taylor & Dansby by Herman L. Taylor.

T. W. Bruton, Attorney General; Harry W. McGalliard, Deputy Attorney General, for the State.

PLESS, J. The defendant makes a very interesting argument in his brief to the effect that it was error for the Court to excuse prospective jurors on the ground that such persons did not believe in capital punishment. He recognies that this position has been adversely determined in the very recent case of *State* v. *Childs*, 269 N.C. 307, 152 S.E. 2d 453, but requests that the Court reconsider and reverse the ruling therein made. However, this decision was adopted by a unanimous Court within the past few weeks, and the reasoning of it is sound and convincing. The following excerpts, some of which are quotations from other courts, are well chosen and concisely stated in the opinion of Chief Justice Parker:

[fol. 131] "It is a general rule that the State in the trial of crimes punishable by death has the right to an impartial jury, and in order to secure it, has the right to challenge for cause any prospective juror who is shown to entertain beliefs regarding capital punishment which would be calculated to prevent him from joining in any verdict carrying the death penalty.

"' . . . What (the defendant) is really asserting is the right to have on the jury some who may be prejudiced in his favor—*i. e.*, some who are opposed to one possible penalty with which he is faced. We think he has no such constitutional right. His right is to absolute impartiality.'

"'It will readily be seen that this "balanced" jury, which the defendant envisages, is in reality a "partisan jury"; if, as he urges, it may include jurors with bias or scruples against capital punishment it must—if it is to have "balance"—include also those with bias in favor of the death penalty as the punishment for murder. It is settled that under the Statute the verdict must be unanimous both as to guilt and as to

punishment. As a result, . . . any juror "can hang the jury if he cannot have his way" as to the sentence which he deems appropriate. These considerations lead to the conclusion that trials before "balanced juries" even on unanimous findings of guilt, would frequently result in disagreements. And disagreements on successive trials would result in practical immunity from murder. We cannot believe that the Statute was intended to have such a tendency.'

"'Upon the theory that conscientious scruples against infliction of the death penalty under any circumstances, or equivalent beliefs, equally disqualify a jury for cause in a prosecution for a capital crime, whether the law prescribes the single punishment of death upon conviction, or invests the jury, upon conviction, with a discretionary power to assess death or life imprisonment according to the evidence and circumstances, the rule has become generally accepted that where the jury is vested with such discretion the state may challenge for such cause because it is entitled to the maximum penalty if the proof shall justify it, and to contend throughout the trial and finally to the jury that the character of the crime justifies it.'"

Fifty-three prospective jurors were examined, sixteen of whom stated that they were opposed to capital punishment, and they were thereupon excused from service. If the argument of the defendant is to be carried to extremes, it would mean that if the State had exhausted its peremptory challenges when these sixteen jurors were examined that the entire jury would have been opposed to [fol. 132] capital punishment. It is well-known that in many horrible cases the defendants are anxious to avoid the possibility of a death sentence and will offer, and in fact plead for permission, to enter a plea of guilty which will mean the imposition of a life sentence. However, the Solicitor in many of these cases feels that the public interest requires that a jury, rather than he, should take the responsibility of saving the defendant from the death penalty, if it is to be done, and therefore puts the defendant on trial in which the death penalty is sought.

Every litigant, whether it be the State or the defendant, in a criminal case or the parties in a civil case, is entitled to an impartial jury. Where a juror states in advance that under no circumstances would he accept the contentions and positions of a party, he is not impartial to that party but, as a corollary, must necessarily be partial to the adversary.

If a prospective juror stated that under no conditions would he acquit a defendant or that no evidence could cause him to convict the defendant, it should not be claimed that he was an impartial juror. In a case in which the prosecution was relying exclusively upon circumstantial evidence, no court would require the State to accept a juror who stated that under no conditions would he convict a defendant upon circumstantial evidence. Where a venireman states that he has read or heard so much about a case that he had formed the opinion that the defendant was guilty, and he would not under any conditions acquit him, no court would permit such person to serve on the jury; and we can conceive of no reasonable person who would argue that he should. This, however, is merely the corollary of the defendant's position in this case.

The result in this case refutes the argument of the defendant. A jury wholly composed of persons who believe in capital punishment have still not imposed it upon the defendant in a case where the facts overwhelmingly would sustain the death penalty.

The defendant complains of the search of his grandmother's house which resulted in finding a rifle that has been identified as the one which fired the shots into the bodies of Mrs. Nelson and Monty Jones. But it must be remembered (1) that his premises were not searched—they were his grandmother's; (2) *his* rifle was not taken—it was his grandmother's; (3) *she* gave permission for the search and has not yet complained of it. Since the Solicitor announced that he was not relying upon the search warrant but upon permission given by the owner of the premises for its search, the question arises as to whether her consent was voluntarily given. While there are decisions that the presence of officers and the announcement

[fol. 133] that they wish to search premises constitutes a condition in which coercion and intimidation may be present, they are not applicable here.

The defendant sought an order of the Court requiring the State to return the rifle and to suppress evidence regarding it. In support of the motion they offered the affidavit of Mrs. Hattie Leath in which she said: "On Tuesday, August 2, 1966, at about 2:00 P.M., four white men drove up to her house in two cars. She knew these men to be officers of the Alamance County Sheriff's Department, although they were not in uniform . . . One of the deputies came up on the porch of her house and walked up to the front screened door. She was standing immediately inside the door. The deputy said he had a notice or a warrant or something like that, for searching her house. He did not appear to have any paper in his hand, and he did not read anything to her. After hearing this, she did not stop to think about whether the officers had a right to search her house. She simply answered the officer right away by saying, 'Go ahead,' as she opened the door and stepped out onto the porch. The officers began at once to search the house."

During the trial the State offered the rifle which was found in the house, and upon objection to its admission, the Court excused the jury, and Mrs. Leath testified in person. Some of her statements are quoted as follows (the underscoring is ours): "I own my own house; it belongs to me . . . The defendant Wayne Darnell Bumpers was living with me on that date . . . He has been living with me at this place all of his life . . . Sheriff Stockard came out to my home . . . Four of them came. I was busy about my work, and they walked up and said, 'I have a search warrant to search your house,' and I walked out and *told them to come on in*. . . . I just told him to come on in and go ahead and search, and I went on about my work. I wasn't concerned what he was about. I was just satisfied . . . I told Mr. Stockard to go ahead and look all over the house. I had no objection to them making a search of my house. I was willing to let them look in any room or drawer in my house they wanted to. Nobody threatened me with anything . . . I let them search, and it

was *all my own free will.* Nobody forced me at all." She also said, "I did have a .22-caliber Remington, single-shot rifle at my house on July 31. Most of the time it stayed inside the wardrobe and then behind the door, out from the living room. This is my rifle . . . I have owned it since my husband bought it."

It is to be noted that the rifle was not found in the defendant's private room, nor in any part of the house assigned to him, but "inside the wardrobe, or behind the door."

[fol. 134] Following Mrs. Leath's testimony, the following entry was made by the Court:

> "THE COURT: The Court finds that from the evidence of Mrs. Hattie Leath that it is of a clear and convincing nature that she, the said Mrs. Hattie Leath, voluntarily consented to the search of her premises, as is more particularly set forth in her evidence, and that that consent was specifically given and is not the result of coercion from the officers. MOTION DENIED for suppression of the evidence with reference to the .22-caliber rifle, marked State's Exhibit No. 2."

We know no better way to establish that one's actions were voluntary than by the statement and attitude of the person concerned. No interpretation can be placed upon Mrs. Leath's testimony that would sustain any claim of coercion or pressure or intimidation. The defendant cites *Mapp* v. *Ohio*, 367 U.S. 643 (1961), and we have also had called to our attention the very recent case of *Maryland Penitentiary* v. *Hayden*, decided by the U. S. Supreme Court 29 May 1967. Upon consideration of them, we find them inapplicable here. Rather, the terse statement of Denny, J., later C.J., speaking for the Court in *State* v. *Moore*, 240 N.C. 749, 83 S.E. 2d 912, is controlling:

> "The first question posed is whether a search warrant was required to search the premises of the defendant if he consented to the search. The answer is no. It is generally held that the owner or occupant of premises, or the one in charge thereof, may consent to a search of such premises and such consent

> will render competent evidence thus obtained. Consent to the search dispenses with the necessity of a search warrant altogether. . . . The second question is whether the defendant consented for the officers to search his premises . . . The Court found as a fact that the defendant, at the request of the officers, voluntarily gave them permission to search his premises . . . the ruling of a trial judge on a *voir dire*, as to the competency or incompetency of evidence [adduced upon the search], will not be disturbed if supported by any competent evidence."

It cannot be successfully argued that when the owner of premises voluntarily gives consent for search that all of the other occupants of the house are required to agree. "One cannot complain of an illegal search and seizure of premises or property which he does not own . . . and one may not object to an illegal or unreasonable search of the property of another, if his own privacy is not unlawfully [fol. 135] invaded." 79 C.J.S. 811, *et sc*. Had the rifle-user concealed the weapon under a stack of hay in a neighbor's barn, his permission need not be granted before the barn could be searched.

In *Commonwealth* v. *Tucker*, 189 Mass. 459, 76 N.E. 127, the officers searched the home where the defendant resided after his mother had invited them to make any search they desired. They found evidence that incriminated the defendant. He contended that the articles taken in the search were not admissible against him. The Court said, "It is argued that the defendant did not consent and that his mother could not consent for him. But that is immaterial. The officers did not act under the warrant but under the invitation of the mother."

The object of government is to protect the rights of the public—the people. Otherwise, there is no reason for it—and the individual would have to protect his home, his possessions, and his family. In protecting the public, we must always remember that innocent persons may be unjustly accused, and their rights, too, must be safeguarded. But we must not become too zealous in protecting the accused that we overlook and ignore those who have been robbed, raped and murdered.

The United States and North Carolina Constitutions wisely and properly inhibit unreasonable and unwarranted searches. These provisions are not intended to shield the criminal—they are to protect the innocent citizen in his privacy, and to make every man's home his castle. They should not give to a criminal an impenetrable fortress in which he can barricade himself against all proof of guilt.

Here, a young woman is twice raped, and then she and her companion are told that they must die, lest they reveal the identity of the rapist and murderer. One bullet from his cruel rifle penetrates the entire body of one. The other is lodged near the heart of the other. Is it unreasonable and unwarranted that the officers, charged with the duty of apprehending the heartless and inhuman perpetrator, should use every energy in locating the weapon use, and apprehending its user? An overwhelming majority of the public would immediately answer that *any* means would be justified. But the officers, recognizing the restraints under which they must work (some might call them unreasonable and unrealistic), make a search of the premises in which they have ample evidence that the accused lived—and do so with the voluntary permission of the person who owns and controls them. Their search might reveal nothing, and to some extent absolve the suspect. The fact that it did reveal the presence of the guilty weapon, to which the already identified assailant had access, justifies the search. Recurring to the funda- [fol. 136] mental that the object is not to protect criminals and to provide them with the right to perpetrate such a horrible crime without fear of apprehension, it is clear that his rights have not been violated. Rather, his wrongs have ~~been detected~~.

For the reasons above stated, we are of the opinion that the evidence with regard to the rifle was competent, and the exceptions relating thereto are overruled.

The defendant also excepts to the following argument alleged to have been made by the Solicitor in his address to the jury: "The State has tried to bring in all the evidence. If there are some questions you want answered, it is not the State's fault that they have not been answered." However, no objection was made at the time, and it is

thus waived. *State* v. *Costner*, 127 N.C. 566, 37 S.E. 326; *State* v. *Jenks*, 184 N.C. 660, 113 S.E. 783; *State* v. *Bryant*, 236 N.C. 745, 73 S.E. 2d 791; *State* v. *Lewis*, 93 N.C. 581; *State* v. *Steele*, 190 N.C. 506, 130 S.E. 308.

The record is not explicit, but apparently, following the argument of the Solicitor, the defendant made an exception to parts of it at which time the Court made the following entry:

> "THE COURT: The defendant objected to the State implying that the defendant did not testify or go upon the stand or present evidence. The Court will instruct the jury as to that phase of the law, and the Court does not recall any reference that the Solicitor made to the defendant's failure to testify, and the Court was present, sitting on the Bench during the entire argument of the Solicitor."

The Court fulfilled the above, and fully protected the defendant's rights (*State* v. *Lewis*, 256 N.C. 430, 124 S.E. 2d 115) when he charged the jury as follows:

> "Now, members of the jury, in this case the defendant has not testified in his own defense, neither has he offered any evidence in his own defense in any of the three cases for which he stands for trial. The Court instructs you that the defendant may or may not testify in own his behalf as he may see fit and his failure to testify shall not create any presumption against him whatsoever. Therefore, the Court further instructs you with reference to the same that there is no requirement upon the defendant to testify, there is no requirement that he give evidence in the case because the requirement is that the State proves the defendant guilty beyond a reasonable doubt as the Court has defined that term of any of the charges against him or any lesser degrees of those charges.
>
> [fol. 137] "Therefore, please bear in mind the instructions that the defendant's failure to testify shall not create any presumption against him whatsoever and certainly no presumption of guilt."

There can be no doubt that an atrocious crime was committed upon the young lady here involved and that her assailant intended to take two lives to avoid identification. There can be little doubt of the good faith of Loretta Nelson in identifying the defendant. It is only human nature that she would insist that the guilty person, and not someone else, be punished. That is also true of her companion. The evidence of these two alone would be amply sufficient to sustain the verdict of the jury and the judgment of the Court. The evidence that the rifle found in the home where the defendant lived was the one that fired the shots into the bodies of the State's witnesses merely "makes assurance doubly sure" that the defendant is guilty. We hold that his rights have been fully protected, and that in his trial there was

No error.

[fol. 138]

SUPREME COURT OF THE UNITED STATES

No. 678 Misc., October Term, 1967

WAYNE DARNELL BUMPER, PETITIONER

v.

NORTH CAROLINA

On petition for writ of Certiorari to the Supreme Court of the State of North Carolina.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—January 15, 1968

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1016 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 289354 583